ARTIFICIAL INTELLIGENCE AND DIRECTORS' FIDUCIARY DUTIES IN CORPORATE DECISION-MAKING*

Abstract

In the world of business, the speedy adoption of artificial intelligence (AI) into decision-making has started to change the reality of what directors actually do in their fiduciary roles, even if not the formal legal framework. From capital allocation, risk evaluation and recruitment, credit analysis, fraud detection to mergers and acquisition due diligence, any major strategic decision made by a corporate board is increasingly supported by machine-learning tools and algorithmic forecasting systems powered by generative AI. This dependency calls into question the continued viability of the primary responsibilities of care, loyalty, good faith and oversight that have long been the pillars of corporate accountability. This article will examine the doctrinal and comparative impact of AI on the directors' fiduciary duties in Nigeria, focussing on the Nigerian Companies and Allied Matters Act 2020 and the UK Companies Act 2006 as well as Delaware corporate jurisprudence in the United States. It asks whether the business judgment rule, as it has been understood, can adequately protect directors who rely on opaque algorithmic guidance, and whether use of AI systems might be enough to meet or fail to meet the informed and independent judgment test. The article also examines the 'black-box' issue, in which the internal workings of complex AI systems are often not comprehensible even to the developers of these systems, and the difficulty of proving good faith, due care, and independent judgment required of directors under fiduciary law. It also explores the evolving role of oversight, analysing the Caremark-line jurisprudence, and considers this duty within the evolving regulatory regime encapsulated in the European Union's AI Act and the United States National Institute of Standards and Technology's AI Risk Management Framework. The article, with doctrinal and comparative approach, concludes that while the current concepts of the fiduciary are conceptually valid, they may be interpreted in a more purposeful manner, with the aid of codified expectations of technological-literacy, algorithmic audit and better statutory guidance especially in developing jurisdictions like Nigeria. The article concludes that, as the future integrity of corporate governance in an AI-mediated economy depends on the directors' having ultimate non-delegable responsibility for corporate judgment, even when such judgment is greatly informed by algorithmic means, the directors must still exercise that judgment. This paper considers the role of Artificial Intelligence in fiduciary duties under the Business Judgment Rule, Directors' duties and CAMA 2020.

Keywords: Artificial Intelligence; Fiduciary Duties; Corporate Governance; Business Judgment Rule; Directors; Duty of Care; CAMA 2020.

1. Introduction

Artificial Intelligence or AI has become an integral part of company decision making processes, playing a vital role in credit risk modelling, fraud detection, strategic forecasting, mergers and acquisitions due diligence, human capital management and many other areas of corporate activities around the world. This transition has been termed a reconfiguration of corporate governance, where in different capacities, algorithms are also involved in decision making.[1] With the use of AI systems becoming part of the informational infrastructure that directors use, questions arise as to how such reliance interacts with the fiduciary duties that directors have to their company. The directors have always been expected to exercise a degree of loyalty, good faith, independent judgment and reasonable care in the exercise of their powers. This is called a fiduciary trust in the United States, and requires a level of technological competence appropriate to the level of risk that the company may be exposed to.[2] Others have gone so far as to predict that the 'Age of Algorithms' will soon cause a seismic shift in fiduciary law in general, impacting not only the efficiency by which directors can act, but also the standards by which their actions will be judged.[3]

Directorship is expressly defined as having a fiduciary character in Nigeria. Section 305 of the Companies and Allied Matters Act 2020 (CAMA 2020) sets out the duties of a director, which include ensuring that he is in a state of good faith and in the best interests of the company, that he does not fetter his discretion, that he does not delegate his powers to the extent of abdicating them, and that he exercises the degree of care, diligence and skill that a reasonably prudent director would exercise in similar circumstances.[4] Now, in the era of an operational corporation run by artificial intelligence, the duties outlined here, to a remarkable degree, in the words of the pre-digital corporation, are now

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[1]Guest Post; 'AI Governance Is a Fiduciary Duty'; The D&O Diary, 2026. https://www.dandodiary.com/2026/06/articles/artificial-intelligence/guest-post-ai-governance-is-a-fiduciary-duty/.

[2] 'Corporate Directors Must Consider Impact of Artificial Intelligence for Effective Corporate Governance'; Business Law Today, American Bar Association, 15 February 2019. https://businesslawtoday.org/2019/02/corporate-directors-must-consider-impact-artificial-intelligence-effective-corporate-governance/.

[3] Cowger Jr, A.R; 'Corporate Fiduciary Duty in the Age of Algorithms'; Case Western Reserve Journal of Law, Technology & the Internet, Vol 14(2), 2023. https://scholarlycommons.law.case.edu/jolti/vol14/iss2/1/.

[4] Companies and Allied Matters Act 2020 (Nigeria), s.305.

being put to the test as to whether the 'reasonably prudent director' should consider any AI-generated recommendation or not, and to what extent.

This article explores the conflicts between the use of AI in business decisions and the obligations of directors' fiduciary duties. It places the Nigerian legal context in context by comparing it with the United Kingdom's Companies Act 2006 and the well-established Delaware case law of the United States, before examining the key points of tension between AI and the duty of care, the duty of loyalty, the business judgment rule, and the duty of oversight. The article also provides an overview of new regulatory measures, such as the European Union's Artificial Intelligence Act and the USA NIST's AI Risk Management Framework, which are starting to define 'reasonable' governance of AI in practice. It ends with a conversation and a set of recommendations aimed primarily at reform of the Nigerian corporate law, but which is broadly applicable to any jurisdiction facing governance issues that arise from algorithmic decision support in the boardroom.

2. The Conceptual and Theoretical Framework

Artificial Intelligence and its Nature

AI is typically defined as the ability of a computer system to demonstrate human intelligence attributes such as reasoning, pattern recognition and learning from data over time.[5] Today, from rule-based expert systems to machine-learning systems that can continuously learn on their own, and even more recently, generative AI which can create natural-language analysis, wrote strategy documents and simulated scenario planning.[6] What is the problem with such systems, anyway, is not that they exist, but because their outputs now form part of the input to board-level decision-making, in much the same way that the outputs of external advisers, management reports and board committee recommendations are now inputs to the board but without the accountability structures that hitherto have been attached to human advisers.[7]

Advanced AI models, such as deep-learning algorithms, are increasingly known as the 'black box problem' because even the model designers don't always know exactly why the model is making a certain output. The 'black-box problem' is a term used in scholarship for this, and it is a fundamental cause of much of the fiduciary issues explored in this article.[8]

Directors' Fiduciary Duties

Fiduciary duties arise when a person is placed in a position of trust and responsibility towards another that they should act in the interests of that other rather than in their own. Directors' fiduciary duties are owed to the company, generally in the corporate setting. In Nigeria, the directors have always been defined as trustees of the money, property and powers of the company, and are required to account for all money which is under their control, and to exercise their powers in good faith for the benefit of the company and the members of the company as opposed to their own or sectional interest.[9] These obligations are generally divided into a number of component obligations: The duty of good faith and loyalty, which imposes the obligation for the directors to act honestly and without conflict of interest; The duty of care, skill and diligence, which imposes on the director the obligation to exercise a reasonable standard of care in their duties; The duty to act within powers and for proper purposes; and, increasingly, a duty of oversight or supervision, which requires that the director exercises the duty of care by ensuring that sufficient information and reporting systems are in place within the company.[10] The UK Companies Act 2006 codifies these duties in sections 171-177 of the Act – which include the duty to act within powers, to promote the success of the company, to exercise independent judgment and to exercise reasonable care, skill and diligence.[11] For centuries, Nigerian courts and legislators have been searching for a model from English law to guide them in the nature of these duties, and in some

[5] 'Corporate Directors Must Consider Impact of Artificial Intelligence for Effective Corporate Governance'; Business Law Today, American Bar Association, 15 February 2019. https://businesslawtoday.org/2019/02/corporate-directors-must-consider-impact-artificial-intelligence-effective-corporate-governance/.

[6] 'The Duty of Supervision in the Age of Generative AI: Urgent Mandates for a Public Company's Board of Directors and Its Executive and Legal Team'; Business Law Today, American Bar Association, March 2024. https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-march/the-duty-of-supervision-in-the-age-of-generative-ai/.

[7] 'The Role of Legal Frameworks in Shaping Ethical Artificial Intelligence Use in Corporate Governance'; 2025. https://arxiv.org/pdf/2503.14540.

[8] Li, Z; 'Artificial Fiduciaries'; SSRN, 2023. https://papers.ssrn.com/sol3/Delivery.cfm/4524129.pdf?abstractid=4524129&mirid=1.

[9] Companies and Allied Matters Act 2020 (Nigeria), s.305.

[10] 'Corporate Governance: The Duties and Responsibilities of Directors under Nigerian Law'; Mondaq. https://www.mondaq.com/nigeria/shareholders/1583068/corporate-governance-the-duties-and-responsibilities-of-directors-under-nigerian-law.

[11] Companies Act 2006 (United Kingdom), ss.171–177.

instances, in deciding them.[12] The business judgment rule (BJR), which has been best developed in the Delaware law, expands on these duties by establishing a rebuttable presumption that a director whose judgments are informed, made in good faith, and based upon a belief that what he/she was doing was in the best interests of the company, will not be second-guessed by the courts, even if the decision turned out to be commercially unwise.[13] It is not a duty, it is a yardstick of judicial review provided its decision-making process is adequate; the rule protects directors from liability for 'honest errors of business judgment.'

3. Legal Framework Governing Directors' Fiduciary Duties

The Nigerian Position

The main law for corporate governance in Nigeria is still the CAMA 2020. Section 305 establishes the fundamental duties of the directors to act in good faith, in the best interests of the company and with such care, diligence and skill as a reasonably prudent director would exercise in similar circumstances.[14] One of the most notable developments in the interests of directors in CAMA 2020, is that the law expanded the director's interest beyond the shareholders' interest to include that of employees, creditors, and the general public and the environment at large, thus providing a more stakeholder-centric vision of corporate purpose than previous versions of the Nigerian company law.[15] The Act also sets out a key principle that delegations of powers by a director should not be a delegation of duty, which is particularly relevant to AI decision making, as the risk of the directors giving force to algorithmic recommendations without any scrutiny is a live governance concern.[16] In addition to these statutory obligations, the Nigerian Code of Corporate Governance 2018 includes governance-specific expectations for the composition of the board of directors, managing risks and internal control systems, but does not currently include anything addressing governance of artificial intelligence or algorithmic decision-support systems.[17] While the 2020 changes have strengthened CAMA's directors' duties regime, it has been noted that it is largely a rewording of earlier common law duties and not a new regime that has been deliberately tailored to address modern technological realities.[18]

United Kingdom and United States

The provisions in section 174 of the UK Companies Act 2006 make the requirement to exercise care, skill and diligence, which reasonably could be expected of a person performing directors' functions, as precise as the Nigerian provision, especially the term 'reasonably diligent person with the general knowledge and skill and experience reasonably expected of a person carrying out the functions of a director'.[19] This dual objective/subjective approach to standard of review allows for a higher level of review of the issue of algorithmic recommendations by a director who has specific expertise in the technical aspects of AI systems, than that of a generalist director, a distinction that Nigerian law does not completely reflect, given that it is largely objective.[20]

Delaware law has been the source of the largest collection of case law concerning directors' responsibilities with regard to oversight and information systems in the United States. In re Caremark International Inc. Derivative Litigation, the Court ruled that 'directors can be held liable when there is no reasonable reporting or information system in place at all or when the directors knowingly ignore red flag reports generated by a system that is in place'.[21] In later cases, Stone v Ritter, it was recognized that this 'Caremark duty' is actually a component of the duty of loyalty, not the duty of care, and thus the failure to exercise it must be proven to be a result of bad faith, not only negligence.[22] A more recent precedence, cited in the context of the duty to monitor AI-related risk, is that of In re the Boeing Co. Derivative Litigation, which extended and clarified this duty to monitor in the context of a failure to

[12] Adamu, H; 'An Examination of the Director's Duty of Care and Skill Under Company Laws of Nigeria and the United Kingdom'; *Corporate Governance Law eJournal*, 2015.
[13] 'Corporate Directors Must Consider Impact of Artificial Intelligence for Effective Corporate Governance'; Business Law Today, American Bar Association, 15 February 2019. https://businesslawtoday.org/2019/02/corporate-directors-must-consider-impact-artificial-intelligence-effective-corporate-governance/.
[14] Companies and Allied Matters Act 2020 (Nigeria), s.305.
[15] 'Emerging Trends in Subsidiary Governance and Liability: A Nigerian Perspective'; UUBO, 2025. https://uubo.org/wp-content/uploads/2025/12/Emerging-Trends-in-Subsidiary-Governance-and-Liability-A-Nigerian-Perspective.pdf.
[16] Companies and Allied Matters Act 2020 (Nigeria), s.305.
[17] Nigerian Code of Corporate Governance 2018.
[18] Elebiju, A; 'Anomalies: The Illogics of Section 283(c) and 201(d) Companies and Allied Matters Act 2020 (Directors' Removal/Disqualification Overkill)'; LeLaw Barristers & Solicitors / Mondaq.
[19] Companies Act 2006 (United Kingdom), ss.171–177.
[20] Adamu, H; 'An Examination of the Director's Duty of Care and Skill Under Company Laws of Nigeria and the United Kingdom'; *Corporate Governance Law eJournal*, 2015.
[21] In re Caremark International Inc. Derivative Litigation (1996) 698 A.2d 959 (Del. Ch.).
[22] Stone v Ritter (2006) 911 A.2d 362 (Del.).

escalate to the board safety-critical information.[23] In re PLX Technology Stockholders Litigation, the Delaware Court again reminds us that the duties of loyalty and care require that directors act at a minimum standard of conduct that is measured by technologically sophisticated conduct.[24]

4. The Intersection of AI and Corporate Decision-Making

This course will explore how artificial intelligence is involved in corporate decision-making. AI is currently being applied to a variety of board and management-level tasks, such as predictive analytics for credit and market risk, algorithmic screening in recruitment and promotion, fraud and anomaly detection, environmental, social and governance (ESG) reporting and AI-driven tools for board papers, due diligence material summarization and strategic option simulation.[25] The findings from corporate director surveys show that there is a significant governance gap in the use of these tools: while many corporate directors are already using AI tools in one way or another, only a small number have articulated a governance framework to address the risks of AI.[26] This increasing dependence challenges the key doctrinal questions posed in this article: What is meant by a director acting on an 'informed basis'? What does it mean for a director to exercise independent judgment? When a material input into a decision is a system, whose internal reasoning may not be fully explicable, and whose outputs may embed biases or errors not readily apparent to a lay director.[27] The original fiduciary system relied on people, in the forms of an external auditor, financial adviser, and legal counsel, whose competence, independence and potential liability could be measured and trusted within a known legal framework. AI systems introduce additional layers of complexity, they are not just like a human adviser on which a director can reasonably rely, nor are they an objective instrument, whose use does not involve any independent governance issue.[28]

In response, scholars have started to describe more sophisticated notions of fiduciary. There are two approaches that differentiate between AI as a decision support tool (where the existing fiduciary rules apply primarily without change) and AI as a quasi-autonomous 'artificial fiduciary' (where the rules of governance need to have a 'human in the loop' to maintain ultimate human responsibility for the actions of AI).[29] A second even more elegant duty is put forward: an 'AI due care' duty of directors to be sufficiently informed and technologically literate to question AI-generated recommendations, and an 'AI loyalty oversight' duty to ensure that algorithmic systems are used in a way that is consistent with the company's, and not any third parties interests.[30]

5. Challenges Posed by AI to the Discharge of Fiduciary Duties

Duty of Care and the Business Judgment Rule

The duty of care requires directors to make decisions on the basis of information they have, taking into consideration all material information reasonably available. A major challenge when relying on AI-generated recommendations is what is meant by 'informed' decision in situations where the logic of the recommendation is not fully explorable.[31] Normally, a sufficiently transparent process of decision making, not the actual result, would satisfy the business judgment requirement, but the opacity of the algorithmic output is an issue where a director's reliance on it is not considered to be on a reasonably informed basis, in the absence of any meaningful human review of the AI's assumptions, data inputs or limitations.[32] For this reason, commentators have called for a reformulation of the business judgment rule itself into a 'Business Judgment Rule 2.0' that would require the directors to show engagement with

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[23] 'The Duty of Supervision in the Age of Generative AI: Urgent Mandates for a Public Company's Board of Directors and Its Executive and Legal Team'; Business Law Today, American Bar Association, March 2024. https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-march/the-duty-of-supervision-in-the-age-of-generative-ai/.

[24] 'Corporate Directors Must Consider Impact of Artificial Intelligence for Effective Corporate Governance'; Business Law Today, American Bar Association, 15 February 2019. https://businesslawtoday.org/2019/02/corporate-directors-must-consider-impact-artificial-intelligence-effective-corporate-governance/.

[25] 'Evolving Corporate Fiduciary Duties and Liabilities in the Era of Artificial Intelligence-Driven Sustainability'; Corporate Governance and Sustainability Review, Vol 10(3), 2026. https://doi.org/10.22495/cgsrv10i3p9.

[26] Evi Eni, O; 'AI Governance and the Board of Directors: Fiduciary Duty, Regulatory Liability, and the Director's Obligation to Govern Artificial Intelligence in 2026'; SSRN, 2026. https://ssrn.com/abstract=6884399.

[27] 'The Role of Legal Frameworks in Shaping Ethical Artificial Intelligence Use in Corporate Governance'; 2025. https://arxiv.org/pdf/2503.14540.

[28] Li, Z; 'Artificial Fiduciaries'; SSRN, 2023. https://papers.ssrn.com/sol3/Delivery.cfm/4524129.pdf?abstractid=4524129&mirid=1.

[29] Li, Z; 'Artificial Fiduciaries'; SSRN, 2023. https://papers.ssrn.com/sol3/Delivery.cfm/4524129.pdf?abstractid=4524129&mirid=1.

[30] Passador, M.L. et al; 'Fiduciary Duties and the Business Judgment Rule 2.0 in the AI Act Age'; Oxford Law Blogs, 29 January 2026. https://blogs.law.ox.ac.uk/oblb/blog-post/2026/01/fiduciary-duties-and-business-judgment-rule-20-ai-act-age.

[31] 'The Role of Legal Frameworks in Shaping Ethical Artificial Intelligence Use in Corporate Governance'; 2025. https://arxiv.org/pdf/2503.14540.

[32] Passador, M.L. et al; 'Fiduciary Duties and the Business Judgment Rule 2.0 in the AI Act Age'; Oxford Law Blogs, 29 January 2026. https://blogs.law.ox.ac.uk/oblb/blog-post/2026/01/fiduciary-duties-and-business-judgment-rule-20-ai-act-age.

the technological literacy needed to question the decision using AI.[33] Without such engagement, reliance on an algorithm runs the risk of being an empty ritual of such low level as to fail the 'substantive' rationale of the business judgment rule's protection.

Duty of Loyalty and Good Faith

Directors should avoid conflicts of interest between themselves and the company and between directors and third parties and should be diligent and careful in exercising their duty to act in the company's best interests and in good faith. The concern that AI systems bring is subtler: that the objective function that is programmed by a third party or that is programmed by management may not perfectly align with the interest of the company as a whole. If the board has no understanding of how the AI systems are designed, trained or optimized, or they are optimized for the interests of the AI vendor, of management, then the board may blindly accept results which are in the best interests of the AI vendor or management, Nickelbrook and others have argued that they are confined to the narrow efficiency measures, not the overall interest of the company and its stakeholders.[34] In Nigeria, for example, where CAMA 2020 calls on directors' decision-making to take into account the interests of shareholders, employees, creditors and the community and environment, a system that is purely algorithmic and geared towards shareholder-value metrics could, if implemented without critical reflection, put directors in a situation of conflict.[35]

Duty of Oversight and Supervision

The concept of the Caremark line of authority is becoming a key doctrinal framework for courts to evaluate the role of directors in connection with failures related to AI. Two forms of director liability have been propounded: for failing altogether to establish a reasonable reporting and information system in connection with the use of AI in a company, or for intentionally overlooking red flags arising from such a system once it has been in place both involve a bad-faith standard which places the duty as part of the duty of loyalty, rather than the duty of care.[36] As illustrated in the Boeing litigation, when the board failed to ensure that the information critical to safety could be communicated to it in a timely manner, this formed the basis for derivative claims which resonates with the practical considerations for boards that do not have reporting mechanisms for escalating AI-related risks, errors, or biases.[37] There has been discussion about the need for AI governance as a burden of oversight for boards, which must make a good faith effort to implement and oversee AI systems in which the risk of algorithmically driven decisions is identified and managed.[38]

The Black-Box Problem and the Accountability Gap

Advanced AI systems, especially deep learning systems, can cause what is called an accountability gap: decisions can be materially influenced by an algorithm, but no one, not even the owner or the developers of the algorithm, can provide a full explanation of what caused the specific output from the algorithm.[39] From a doctrinal perspective, directors' powers have traditionally depended on their ability to explain and justify their actions, be it to shareholders, regulators or courts. When a director cannot provide a meaningful explanation other than that the system suggested it, the requirement for independent judgment, which is an integral aspect of duty of care in both Nigerian and English law, is difficult to meet.[40]

Delegation versus Abdication

Directors are not allowed to abdicate by delegating authority in a way that would be considered an abdication of responsibility under CAMA 2020.[41] In the AI sphere, this is especially relevant as the recommendations of algorithms, when they are used without proper scrutiny, can often be as convenient as it being a done deal, with the director essentially abdicating his or her non-delegable duty for the final decision. The difference between legitimate reliance and illegitimate abdication may hinge on how much control, or capacity to control, directors have over the ability to independently verify and challenge the work of AI systems, with that ability becoming increasingly difficult to satisfy as AI systems become more complex and able to act on their own.[42]

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[33] Ibid

[34] 'Evolving Corporate Fiduciary Duties and Liabilities in the Era of Artificial Intelligence-Driven Sustainability'; Corporate Governance and Sustainability Review, Vol 10(3), 2026. https://doi.org/10.22495/cgsrv10i3p9.

[35] 'Emerging Trends in Subsidiary Governance and Liability: A Nigerian Perspective'; UUBO, 2025. https://uubo.org/wp-content/uploads/2025/12/Emerging-Trends-in-Subsidiary-Governance-and-Liability-A-Nigerian-Perspective.pdf.

[36] In re Caremark International Inc. Derivative Litigation (1996) 698 A.2d 959 (Del. Ch.).

[37] 'The Duty of Supervision in the Age of Generative AI: Urgent Mandates for a Public Company's Board of Directors and Its Executive and Legal Team'; Business Law Today, American Bar Association, March 2024. https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-march/the-duty-of-supervision-in-the-age-of-generative-ai/.

[38] Guest Post; 'AI Governance Is a Fiduciary Duty'; The D&O Diary, 2026. https://www.dandodiary.com/2026/06/articles/artificial-intelligence/guest-post-ai-governance-is-a-fiduciary-duty/.

[39] Li, Z; 'Artificial Fiduciaries'; SSRN, 2023. https://papers.ssrn.com/sol3/Delivery.cfm/4524129.pdf?abstractid=4524129&mirid=1.

[40] Companies Act 2006 (United Kingdom), ss.171–177.

[41] Companies and Allied Matters Act 2020 (Nigeria), s.305.

[42] Cowger Jr, A.R; 'Corporate Fiduciary Duty in the Age of Algorithms'; Case Western Reserve Journal of Law, Technology & the Internet, Vol 14(2), 2023. https://scholarlycommons.law.case.edu/jolti/vol14/iss2/1/.

6. Judicial and Regulatory Responses

To date, responses to the governance issues arising from AI have been mostly ad hoc and outside of the company law framework, either as sectorial or horizontal AI regulation which nevertheless has a direct impact on the fiduciary duties of directors. The European Union's Artificial Intelligence Act establishes a risk-based regulatory framework for AI, including significant fines of up to €35 million or 7% of worldwide turnover for severe breaches of the law in the context of high-risk AI systems.[43] While not directly targeting corporate boards, the risk classification system provided in the AI Act is beginning to be interpreted as a de facto benchmark for corporate governance, which can be used to assess the reasonableness of a corporate board's AI oversight arrangements.[44]

The National Institute of Standards and Technology, in the United States, released its AI Risk Management Framework in January 2023, as a result of a congressional directive in the National Artificial Intelligence Initiative Act of 2020. The framework is accompanied by an implementation playbook, providing guidance to help inform and support the identification, assessment and management of AI-related risk, by governance role and operational context.[45] The framework has no enforcement powers in itself, but its voluntary standards have been increasingly referenced in the context of the standard of reasonable care that a prudent board might reasonably be expected to observe when monitoring the deployment of AI, as a code of practice had in the past been able to persuade a court in negligence and fiduciary cases.[46]

In more recent examination priorities, the SEC has identified AI as a systemic market risk that warrants increased supervisory focus, and expects boards of regulated entities to be active in their supervision of AI exposure.[47] In spite of the statutory differences, comparative research across the U.S., U.K., Canada, Australia and New Zealand indicates that common law systems are moving towards a common understanding: that the board of directors ought to have a working knowledge of the AI systems relevant to their company's business and provide governance mechanisms sufficient to ensure monitoring and challenge of algorithmic outputs.[48] To date, there is no Nigerian statute or regulation that defines the governance of AI at the board level; in Nigeria, the general and technology agnostic language of section 305 of CAMA 2020 will, as and when needed, be used to guide boards on AI related matters in court proceedings.[49]

7. Emerging Frameworks and Best Practices for AI Governance

Despite the lack of specific laws governing AI in many jurisdictions, the literature surveyed in this article has identified a number of themes that have arisen in the best practice literature. First, boards are increasingly called upon to have a baseline technological literacy to question, rather than blindly accept, recommendations from AI; this is seen in the proposed 'AI due care' standard.[50] Second, the companies are encouraged to develop specific reporting systems for escalating AI-related risks, errors and anomalies to the board, consistent with the Caremark type of reporting obligations.[51] Third, the principle of 'human in the loop' (HITL), in which material consequences are based on some human review, is routinely cited as a practical mitigating measure to prevent the abdication of directorial responsibility.[52] Fourth, boards shall seek from vendors and in-house staff, and regularly audit, algorithmic audit and bias-testing procedures, especially in instances where AI systems are used to make decisions that can have disparate impact, such as in the allocation of credit or recruitment.[53] Lastly, a few commentators suggest that board-level or committee-level accountability for AI oversight be established, either through a risk or audit committee, or via a special committee on AI and technology, to prevent the oversight of AI from slipping through the cracks between the various bodies that currently exist on the board.[54]

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[43] Regulation (EU) 2024/1689 of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024.

[44] Passador, M.L. et al; 'Fiduciary Duties and the Business Judgment Rule 2.0 in the AI Act Age'; Oxford Law Blogs, 29 January 2026. https://blogs.law.ox.ac.uk/oblb/blog-post/2026/01/fiduciary-duties-and-business-judgment-rule-20-ai-act-age.

[45] National Institute of Standards and Technology; AI Risk Management Framework (NIST AI RMF), 26 January 2023, issued pursuant to the National Artificial Intelligence Initiative Act of 2020.

[46] Guest Post; 'AI Governance Is a Fiduciary Duty'; The D&O Diary, 2026. https://www.dandodiary.com/2026/06/articles/artificial-intelligence/guest-post-ai-governance-is-a-fiduciary-duty/.

[47] Evi Eni, O; 'AI Governance and the Board of Directors: Fiduciary Duty, Regulatory Liability, and the Director's Obligation to Govern Artificial Intelligence in 2026'; SSRN, 2026. https://ssrn.com/abstract=6884399.

[48] Ibid

[49] Companies and Allied Matters Act 2020 (Nigeria), s.305.

[50] Passador, M.L. et al; 'Fiduciary Duties and the Business Judgment Rule 2.0 in the AI Act Age'; Oxford Law Blogs, 29 January 2026. https://blogs.law.ox.ac.uk/oblb/blog-post/2026/01/fiduciary-duties-and-business-judgment-rule-20-ai-act-age.

[51] In re Caremark International Inc. Derivative Litigation (1996) 698 A.2d 959 (Del. Ch.).

[52]Li, Z; 'Artificial Fiduciaries'; SSRN, 2023. https://papers.ssrn.com/sol3/Delivery.cfm/4524129.pdf?abstractid=4524129&mirid=1.

[53] 'The Role of Legal Frameworks in Shaping Ethical Artificial Intelligence Use in Corporate Governance'; 2025. https://arxiv.org/pdf/2503.14540.

[54] 'The Duty of Supervision in the Age of Generative AI: Urgent Mandates for a Public Company's Board of Directors and Its Executive and Legal Team'; Business Law Today, American Bar Association, March 2024. https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-march/the-duty-of-supervision-in-the-age-of-generative-ai/.

8. Implications for the Nigerian Corporate Boards and Regulatory Gaps

In credit scoring, fraud detection and customer risk profiling, Nigerian firms have advanced quickly to the incorporation of AI decisions, sometimes outpacing the regulatory and governance frameworks designed to address the attendant fiduciary risk.[55] While in principle Section 305 of CAMA 2020 could cover algorithmic fact patterns, the section provides little specific guidance as to how the directors are to exercise their 'care, diligence and skill' when a material input into their decision has been algorithmically generated.[56] There is no dual objective-subjective standard, like in section 174 of the Companies Act 2006 of the UK, in Nigeria, leaving Nigerian directors without a standard from which to draw distinction between the standard expected of a technologically sophisticated director and the standard expected of a generalist board member.[57] Although the Nigerian Code of Corporate Governance 2018 calls for strong Internal Control and Risk Management systems, it does not at present specify any governance mechanisms, algorithmic audit demands, or a minimum number of technological literacy required on the board of directors for AI. The silence in this regulation is stark compared to the growing clarity of the regulatory frameworks that have been developed in the European Union and the United States, and could leave Nigerian directors to sail through the liability waters of AI without any specific guidance from technology-specific common law rules that have been in existence for decades. In the context of Nigeria's efforts to enhance investor confidence and boost its ease of doing business, the modernization of the framework of director's duties to explicitly address AI governance would be a logical progression of the reform already introduced by CAMA 2020.[58]

9. Conclusion and Recommendations

The purpose of this article is to explore the interaction between the long-standing fiduciary duties of directors to their corporations and the emerging use of artificial intelligence in corporate decision making processes. The analysis reveals that the fundamental doctrinal conceptual framework of fiduciary law (good faith, loyalty, independent judgment and reasonable care) is conceptually appropriate to the challenges of AI, but is experiencing real pressure in practice. The business judgment rule, which in the past has been used to protect good faith commercial errors, may be misapplied to the case where directors rely on algorithmic recommendations that they cannot adequately explain or validate. Likewise, the responsibility for oversight, which predates the arrival of AI in boardrooms, is the doctrinal battleground where questions about algorithmic accountability are likely to be most aptly tested as boards are increasingly asked to develop reporting and escalation processes that will bring to light potential AI-related risks before they become reality in terms of loss. The comparative review carried out in this article has revealed that the law in Nigeria, though it is structurally well developed in its recognition of the fiduciary duties of directors under the Companies and Allied Matters Act 2020, has yet to be updated to address the realities of algorithmic decision-support and this is what more developed jurisdictions are starting to do with specific legislation and judicial elucidations.

The Nigerian corporate law should be revamped to include a more transparent and technology-driven test of care to be expected of directors, similar to the dual objective-subjective test used in the United Kingdom, thus enabling a higher standard of care for directors who have the requisite technological expertise to rely on AI-generated output. CAC and the Financial Reporting Council of Nigeria (FRC) should develop sector-specific guidelines that will require inclusion of a documented AI governance framework by regulated firms, including the appointment of AI algorithmic oversight committees at board level, the requirement for periodic independent audit of the AI systems for bias, reliability and compliance with the company's obligations to stakeholders as enshrined in section 305 of CAMA 2020, as well as the need for human review of decisions made by AI tools that are consequential to the regulated entity's operations. Both regulatory and professional organizations also need to invest in structured director-education programs on artificial intelligence, and make it part of the business-as-usual director education program, instead of a special skill that only a few directors have.

The answer to the dilemma of AI and fiduciary duty is not that AI should never be used in corporate choices, or that algorithmic suggestions should be considered automatic directives for human actions. It is not about delegates' delegating and transferring to AI their fiduciary duties to exercise judgment, to balance competing interests, or to accept the fiduciary responsibility that fiduciary law places on them. When boards act as one of several inputs to a critical review, structured escalation and documented verification of the AI system, they will be more likely to meet the letter and spirit of their fiduciary duties. Boards that accept the words of the algorithm as gospel will someday discover that asking the most basic question in fiduciary law — did the director act on a 'good faith, informed and independent' basis in the best interests of the company is not so much a threat as a blessing.

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[55] 'Emerging Trends in Subsidiary Governance and Liability: A Nigerian Perspective'; UUBO, 2025. https://uubo.org/wp-content/uploads/2025/12/Emerging-Trends-in-Subsidiary-Governance-and-Liability-A-Nigerian-Perspective.pdf.

[56] Companies and Allied Matters Act 2020 (Nigeria), s.305.

[57] Adamu, H; 'A Comparative Analysis of Directors' Duties of Care and Skill and Fiduciary Duties of Loyalty and Good Faith Under the Companies' Acts of Nigeria and the United Kingdom'; *Ahmadu Bello University Repository,* November 2015. https://kubanni.abu.edu.ng/handle/123456789/8097.

[58] 'Emerging Trends in Subsidiary Governance and Liability: A Nigerian Perspective'; UUBO, 2025. https://uubo.org/wp-content/uploads/2025/12/Emerging-Trends-in-Subsidiary-Governance-and-Liability-A-Nigerian-Perspective.pdf.