

The National Association of Corporate Directors of the USA (NACD) has seen this risk and opportunity of generative AI and has discussed it at length. This has caused people like Elon Musk to conclude that it is the greatest threat to humanity while others say it's the most wonderful aid. So, there is a risk and opportunity involved in generative AI. But what is needed is responsible leadership. We must see this generative AI as a strategic imperative and not just as an operational issue. And in order to achieve this and to have responsible leadership, corporate leaders around the world must make sure there's continuous technological learning about AI developments and this should be done on a collaborative basis.

People who know me, and the work I've done around the world, know I believe that SDG 17 is perhaps the most important UN Sustainable Development Goal - collaboration. We saw this with the creation of a vaccination for the COVID pandemic which was created in nine months instead of nine years. Likewise, there must be collaboration now with generative AI. Generative AI impacts both strategy and the organization's risk profile. We must be careful that Gen AI does not tilt decision-making towards the system and away from original intellectual thought. Leaders are, and must remain, the decision-making authority of a company, which is, after all, an incapacitated artificial person.

We, as directors, are the heart, mind, and conscience of that company. We need original intellectual thought in arriving at a decision or an issue facing the company. AI can be used as an enabler, but it must never replace that original intellectual thought. Perhaps this is what Elon Musk was referring to. Problems will arise if companies rely too much on AI and forget their duty of care.

We must also be careful, as responsible leaders, to make sure that the AI doesn't negatively impact the company's business model. Research around the world has shown that AI will change organizational structures. The research shows that in the 12 largest economies 120 million workers will need to be retrained and reskilled in the next few years because of AI. Boards must be constantly informed of how AI is impacting the organizational structure and of course its human capital. This will require original intellectual thinking but aided by AI to hopefully make more informed and better business judgment calls.

Issues such as the legal concept of the 'business judgment rule' will be tested during the generative AI phase as never before. Consider the circumstance when a director takes guidance from generative IA when making a business judgment call, where, of course, the generative AI depends on the quality of the input data on which it's trained and how it was asked for answers. Consider if in such a circumstance the business judgment call years later turns out to be harmful to the company.

The law is quite clear that the company has an action for damages against the director, but the law is not an ass. So, from Delaware and then around the world the adoption of the business judgment rule. The rule provides that if the board as a collective knew all the facts, had no financial interest in the matter, and with the wisdom of hindsight, it appears to have been a rational business decision at that time in those circumstances, then the board escapes liability. Notice not the correct decision, the rational decision. The board will be asked if it did indeed have all the facts and what AI tool was used to know all these facts, or perhaps whether AI was used to make sure that the decision was a rational decision in those circumstances at that time. Clearly, generative AI is going to have a tremendous impact on those protective elements of being a director.

These issues are going to be tested over the next few years and in the years to come.