CORPORATE GOVERNANCE IN AI-DRIVEN ORGANISATIONS

Singapore's Personal Data Protection Commission ("PDPC") released the second edition of its Model AI Governance Framework ("Model Framework") at the 2020 World Economic Forum Annual Meeting in Davos, Switzerland. The Model Framework has been updated following feedback from organisations that have adopted artificial intelligence ("AI"), as well as feedback from PDPC's participation in international platforms. The Model Framework is a general ready-to-use tool for organisations deploying AI solutions and is meant to serve as guidance. Adoption of any of the practices in the Model Framework is voluntary. Additionally, the World Economic Forum released an AI Board Toolkit to help organisations better understand the issues surrounding the deployment of AI solutions.

In this article, Heng Jun Meng, Director of ZICO Insights Law LLC discusses corporate governance issues for AI-driven organisations and matters to consider in the deployment of AI.

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AI GOVERNANCE

SINGAPORE'S AI GOVERNANCE FRAMEWORK

Singapore's Personal Data Protection Commission ("**PDPC**") released the second edition of its Model AI Governance Framework ("**Model Framework**") at the 2020 World Economic Forum Annual Meeting in Davos, Switzerland. The first edition of the Model Framework was released in January 2019. The Model Framework has been updated following feedback from organisations that have adopted artificial intelligence ("**AI**"), as well as feedback from PDPC's participation in international platforms.

The Model Framework now includes additional guidance and suggestions on the following:

AI-augmented decision-making
Clarifications on how to determine the level of human involvement required in an organisation's decision-making process involving AI.

Guidance on implementation
Guidance on new measures that can be taken to enhance the transparency of the AI adoption process, such as robustness, reproducibility and auditability.

Stakeholder interaction
Suggestions on information that organisations may provide to stakeholders to build trust in their deployment of AI.

AI BOARD TOOLKIT

In addition, the World Economic Forum has collaborated with more than 100 partners to create an AI Board Toolkit, which is designed to help directors of companies better understand the key issues surrounding the deployment of AI solutions and their responsibilities as board members. The toolkit comprises 12 modules (including ethics, governance, people and culture), and is designed to align with traditional board committees, working groups and oversight concerns.

APPLICATION

The Board of Directors of organisations that deploy AI solutions at scale should consider applying the recommendations in the Model Framework and the AI Board Toolkit. Examples of such AI-use cases include autonomous vehicles, automated eligibility review for financial products, and automated review of job applications.

The Model Framework and AI Board Toolkit can be used by any organisation regardless of its business, scale, AI methodology, technology or sector. Organisations can use these guides as a starting point, and tailor measures to address issues relating to their use of AI taking into account the organisation's specific needs and circumstances. Organisations should also review their AI governance framework in light of legal issues such as data protection, and industry-specific guidelines such as the FEAT principles issued by the Monetary Authority of Singapore.

THE ROLE OF THE BOARD OF DIRECTORS

The Board plays a critical role in ensuring that its organisation has a clearly defined governance structure to brainstorm issues, monitor development and deployment, and manage stakeholder interaction relating to the AI solution being deployed. The Board should also consider whether its existing board composition, terms of reference and risk management framework is adequate to manage the evolving demands of AI deployment.

Responsibilities that may fall under the Board's ambit include strategic review of suitable AI uses, review of the appropriate level of human involvement in AI solutions, creating a code of ethics for AI deployment, determining acceptable uses of personal data and establishing policies on disclosure of information about AI to its consumers.

If necessary, Boards can establish a new sub-committee to focus specifically on AI-related matters such as ethical codes, assessment of possible harm arising from the AI solution, the frequency of

internal audits, training or upskilling of employees and regulator engagement. As these issues often cut across different business functions, the expertise of board members and executives involved in an AI-specific subcommittee should be sufficiently diverse.

When assessing its AI-governance readiness, the Board should consider the following:

✓ Does the Board have the **experience and knowledge** to effectively oversee AI issues?

✓ What are the AI activities **overseen under the existing board or governance structure**?

✓ Do the **terms of reference of the Board** sufficiently cover AI-specific issues?

✓ Do the governance structure and internal processes set out clearly **defined roles and responsibilities**?

✓ Has the organisation established **standards of ethical behaviour**, and **how such standards will be promoted, enforced and updated**?

✓ Has the organisation undertaken a **review of the legal risks of AI systems**?

✓ Are the **perspectives of persons of different backgrounds and expertise** (such as legal/compliance, technical, data science, and sales) represented in discussions and decision-making processes?

✓ Is the AI application consistent with the **organisation's core values and/or societal expectations**?

✓ Are there any **existing laws and regulations** that apply to the AI application being deployed?

AI GOVERNANCE

(A) HARM AND HUMAN INVOLVEMENT

In determining whether active, supervisory or no human oversight is required in the AI-augmented decision-making process, organisations should consider the *probability* of harm to an individual/organisation that may result from the decision made by the organisation about that individual/organisation, and the *severity* of such harm. This inquiry can be structured based on the impact on internal and external stakeholders.

The assessment of harm is dependent on the context in which the AI solution is implemented as well as the sector the organisation operates

in. Organisations may also take into account the nature of harm (whether physical or intangible), the reversibility of harm, the ability of individuals to obtain recourse, and the feasibility of human involvement in the decision-making process.

Organisations should also put in place processes to continually review and mitigate risks posed by the AI application. The performance of the AI application and changing societal norms may in some cases require retraining of the AI model.

(B) EXPLAINABILITY, ROBUSTNESS AND REPRODUCIBILITY

In order to build trust with their stakeholders, organisations should prioritise explainability, robustness and regular tuning of the AI model. Organisations may consider using model reports, visualisations and simple examples to explain how its AI model functions. For example,

explaining to its users that the posts appearing on the news feed of a person's social media account may be influenced by the posts viewed by that person, his interactions with such posts and his personal connections. If explanations are not practical or relevant, organisations

If you have any questions on corporate governance relating to the use of AI, please contact Heng Jun Meng or any director of ZICO Insights Law LLC.

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Jun Meng advises clients on a wide variety of corporate matters including cross-border mergers and acquisitions, capital markets transactions, personal data protection and commercial transactions. His experience includes reverse takeovers, secondary post-listing fund raising, regulatory compliance as well as post-listing advisory. Jun Meng also advises on the contractual, regulatory and structuring of digital token offerings. He serves on the Information Technology Committee of the Law Society of Singapore.

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