

Directors' Duties in Managing AI and ESG Under Malaysian Law: A Doctrinal Analysis

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ABSTRACT

The emergence of Artificial Intelligence (AI) technologies and Environmental, Social, and Governance (ESG) integration with corporate governance has redefined the company directors' responsibility. This scenario has changed the important legal questions on the extent to which directors in Malaysia are obliged to oversee and govern emerging risks and opportunities related to AI and ESG. This article examines the directors' duties under the Companies Act 2016 using the doctrinal legal research methodology to determine whether there are provisions in relation to AI and ESG governance. To answer the question, a systematic analysis of the statute, case law and other regulatory frameworks is explored to clarify the emergence of legal duties of directors. The positions from the United Kingdom, Australia and Canada are referred to highlight international trends and best practices as a basis of comparison. The article asserts that directors are increasingly required to be actively involved with ESG and AI-related governance risks, including ethical considerations, transparency and sustainability reporting. It emphasised the need for legal reform, board competency enhancement, and clear regulatory frameworks to ensure that the boards are well-positioned to address the growing challenges of AI and ESG. In essence, the article suggests that directors must adopt a strategic and principled approach to governance that aligns with both statutory obligations and stakeholder expectations in the digital and sustainability-driven business landscape.

Keywords: Director's duty; Artificial Intelligence; Environment Social and Governance (ESG); Corporate Governance

INTRODUCTION

The law on directors' duty has been subjected to substantial transformation throughout the years. The directors traditionally are expected to exercise their duty of care under the common law and statute in the best interests of the company (Keay, 2008). The courts have interpreted the best of the interests of the company to mean the best interests of shareholders to maximise their wealth. The shareholders' wealth maximisation theory viewed a company as an association of shareholders formed for their private gain and to be managed solely by its board of directors for that purpose (Halpern, Trebilcock and Turnbull, 1980). The Companies Act 2016 in section 210 and section 213 have codified the principles of common law in relation to directors' responsibilities and liabilities. Directors' decision-making face new challenges with the rise of Artificial Intelligence (AI) in corporate operations and must adapt to their responsibilities to meet these new challenges. (Sasaki, Kozuka & Izumi, 2025). Gillis & Spiess (2019) discovered that directors are increasingly required to understand and oversee the usage of AI tools on planning, customer profiling and compliance monitoring. In the

decisionmaking process, legal and ethical concerns are raised in the areas of algorithmic bias, data privacy, and transparency. Failure of a director to adequately assess the risks associated with the use of AI could be considered as a breach of duty, especially if it causes harm and non-compliance (Brand, 2024).

Likewise, directors' obligations are being shaped by the Environmental, Social, and Governance (ESG) factors. The boards are required to take into consideration ESG risks as part of their fiduciary and statutory duties to protect shareholders' wealth, not merely for the company's reputation (Ortega, 2024). To strengthen the incorporation of ESG into corporate governance in Malaysia, Bursa Malaysia's Sustainability Reporting Guidelines in 2023 impose an obligation on listed companies to disclose ESG risks and strategies. At the international level, ESG accountability is shaped by instruments like Task Force on Climate-related Financial Disclosures (TCFD) and the UN's Sustainable Development Goals (SDGs).

Hence, the development of AI and ESG is reshaping the expectations on directors when making decision in the best interest of the company. When considering the best interests of the company, shareholder wealth maximisation alone is no longer sufficient. Traditionally, directors have discharged their duty if their decisionmaking results in shareholders' wealth maximisation. Brand (2024) stated that directors are pressured to adopt a future-oriented, risk-sensitive, and ethically aware approach to governance in the light of the development of AI and ESG. This indicates a shift in the legal interpretation, where immediate financial outcomes which is construed in the interests of shareholders' wealth maximisation but also for long-term stakeholder impact (stakeholders' interests' theory) and systematic risks.

This paper aims to examine the development of the company directors' duty in the age of AI and ESG in Malaysia. The fundamental issue on this area of law is the absence of clear legal standard how directors should address digital transformation and sustainability demand. The study adopts a doctrinal legal research method, an analysis of statutes, judicial interpretation on case law and regulations and guidelines to determine the scope of directors' duties. It ends with, the recommendations and legal reforms to enhance corporate governance in the area of directors' duties.

LITERATURE REVIEW

Development of Directors' Duties

In addition, the evolution of directors' duties in Malaysia requires deeper anchoring in specific local judicial precedents. For instance, the case of *Kawin Industrial Sdn Bhd (in liquidation) v Tay Tiong Soong* [2009] 1 MLJ 723 demonstrates the court's willingness to recognize creditors' interests during insolvency. More recently, the increasing regulatory expectations under Bursa Malaysia's Sustainability Reporting Guidelines (2023) underscore the soft-law pressures on companies to disclose and act on ESG metrics. However, these guidelines lack enforcement mechanisms and judicial precedents interpreting compliance failures, which highlights a significant enforcement gap.

One of the central themes in corporate law jurisprudence is the shifting nature of directors' duty in response to the changes in legal frameworks, economic conditions and societal expectations. The shareholder primacy theory is the foundation of the directors' duty, which must be exercised in the best interests of the company. This theory has long been established, advocates for maximising shareholder value (Friedman, 1970). As such, case law has affirmed that in discharging their duties, directors must ensure that it is aligned with increasing profits, enhancing share value, and delivering returns to investors (Hansmann & Kraakman, 1993).

In the late 20th century, shareholder maximisation faced growing criticisms due to corporate scandals, environmental crises, and growing concerns over social responsibility. Consequently, the stakeholder theory took shaped which requires the directors to consider broad range of stakeholder's employees, consumers, communities, and the environment (Freeman, 2010). The stakeholder theory is seen to be more in line with the development of ESG, where the directors need to consider sustainable and ethical business practices is discharging their obligations. This theory was supported by Keay (2008) and Millon (2011) who asserted that stakeholders' interests and ethical governance are crucial for long-term corporate interests. Tian & Zhang

(2016) also pointed out that merely focusing on the shareholders' interests does not meet the needs of economic and social development. This view was supported in the European Union Final Report in 2020, which concluded that focusing too much on shareholder primacy can reduce a company's long-term sustainability efforts and lead to a limited view of what serves the company's interests." In addition, the OECD Principles of Corporate Governance and section 172 of the UK Companies Act 2006 reflected the explicit recognition of stakeholders' interests.

The Malaysian Code of Governance (MCCG) adopted the definition of corporate governance from the HighLevel Finance Committee Report (1999) as "the process and structure used to direct and manage the business and affairs of the company towards promoting business prosperity and corporate accountability with the ultimate objective of realising long-term shareholder value while taking into account the interest of other stakeholders." Corporate governance is vital to prevent unwanted conflicts by furnishing a control mechanisms framework to support the company in achieving its goals (MCCG, 2021).

When the MCCG was first introduced in 2010, the focus on the responsibility of the Board of Directors was on the financial aspects of corporate governance. Many financial scandals were discovered during the time due to a few's greed, leading to the companies' collapse and affecting millions of lives. The shift from shareholder maximisation to stakeholder is prompted by the global financial crisis and corporate scandal such as Enron and Lehman Brothers which revealed the implications of narrow interpretation of fiduciary. Malaysia also face similar high-profile financial scandals like 1Malaysia Development Berhad (1MDB) in 2015 and Transmile Group Berhad scandal in 2007 exposed weaknesses in governance and highlighted the importance of adopting a stakeholder-inclusive approach to directors' duties.

Unfortunately, accounting scandals are not the only contributing factor to the need for good corporate governance. Climate change and environmental degradation from oil spills in sensitive areas threatening wildlife and water supply to wildfire and floods have been attributed to companies. In 2021, the MCCG was reviewed and updated to include the sustainability agenda in the board's decision-making. The company must prioritise the environment, social and governance (ESG) risks and benefits and integrate them into its investment decisionmaking process as part of its fiduciary duty (MCCG, 2021). The Covid-19 pandemic has woken companies to the importance of sustainability agenda. It enlightened that sustainability includes other crucial matters such as workplace wellbeing, the fragility of the supply chain and access to health, and environmental and financial crises.

Another important aspect in the development of directors' duty is during corporate insolvency where the interests of creditors become paramount. Courts in common law jurisdictions have recognised that directors, who traditionally owe their duties to the company and by extension its shareholders, must shift their focus to creditors when insolvency becomes likely. Mason J in *Walker v Wimborne* (1976) 3 ACLR 529 at 531 asserted that failure to creditors' interests would have adverse consequences for both the company and the directors and such effect would be the company's insolvent condition and the liability imposed on the directors. The House of Lords in *Winkworth v Edward Baron Development Co Ltd* [1986] 1 W.L.R. 1512 at pp 1517 acknowledged the duty owed to creditors when the company is insolvent. In that situation, directors have a duty to ensure that the property of the company is sufficient to meet its obligation to the creditors. The rationale for imposing a duty to the company and to creditors is to ensure that the affairs of the company are properly administered and that its property is not dissipated or exploited for the benefit of the directors themselves to the prejudice of the creditors. The Supreme Court of Canada, in *Peoples Department Stores Inc. (Trustee of) v Wise* (2004 SCC 68), concluded that the duty owed to the corporation although directors must consider the impact on creditors if it affects the corporations' ongoing viability.

The Malaysian courts, albeit later than in the UK, Australia and Canada, have also begun to acknowledge the interests of creditors during insolvency (Mansor, 2011). The court *Kawin Industrial Sdn Bhd (in liquidation) v Tay Tiong Soong* [2009] 1 MLJ 723, held that in exercising discretion, directors must act in accordance with what they perceived as bona fide for the interests of the company. Therefore, it concluded purchasing goods from third party when the company has ceased operation and insolvent could not be in the interest of the company. The court also referred to the decision in *Winkworth v Edward Baron Development Co Ltd* [1986] 1

W.L.R. 1512 and acknowledged directors owe duty to creditors not to act in their own interests to the prejudice of creditors when the company is insolvent. Goode (2011) stated that these decisions reflect the reality that creditors are the primary residual claimants in a financially distressed company (Goode, 2011). This position is codified in the UK Insolvency Act 1986, section 214, and Australia's Corporations Act 2001, section 588G, which impose personal liability on directors who allow a company to incur debts while insolvent (Keay, 2008; Austin & Ramsay, 2010).

In Malaysia, the Companies Act 2016 codifies directors' duties but retains ambiguity around how these duties extend to ESG and AI-related responsibilities. Directors owe loyalty and good faith to the company, which means they must advance the interests of the company (*Re Smith and Fawcett Ltd*, 1942). This concept is wide enough to cover the interests of various parties in the company, for in most cases their interests are inter-related, this being necessary for the survival of the company (Mansor, 2011). Difficulties arise when these interests conflict with one another and in such cases, the question is whose interests should prevail. Since the duty is owed by directors to the company, no interests should triumph over the others; it is essential for directors in achieving their objectives and not to expose any groups to unnecessary risks (Mansor, 2011). Directors should consider all interests without any preference.

Despite the positive feedback from investors on the company's decision to consider the interests of stakeholders

in the company, the study conducted by the European Union (2020) showed that shareholders' supremacy still takes precedent in corporate decision-making. In addition to the short-term financial market pressures, company decision making often being made at the expense of more sustainable investments such as on research and development (R&D) and the development of the employees.

The Importance of Artificial Intelligence in Corporate Governance and Its Implications

The incorporation of Artificial Intelligence (AI) in board decision signals a transformation of the board's operation in assessing risks and ensuring compliance. The use of AI in decision making promote efficiency, transparency and accountability of corporate governance such as in financial reporting, internal audits, fraud detection, customer behaviour analytics, regulatory compliance, and even boardroom decision support systems. The implementation of AI driven tools has been found to strengthen the board's oversight functions, especially in identifying early signs of financial mismanagement or breaches of compliance (Ogunmokun, Bologun & Ogunsola, 2025; Luis, 2024; Bar-Hava, 2024).

AI also enhance the key pillars of good corporate governance i.e. the transparency and accountability of the board (Verhazen, 2020). Automated reporting system and predictive analysis help to detect discrepancies, to monitor transaction flows and to ensure stakeholders receive accurate and immediate disclosure of information. Nevertheless, the use of AI could also present legal and ethical implications (Ustahaliloğlu, 2025), such as lack of algorithmic transparency which causes discriminatory outcomes and to ensure that AI systems do not disproportionately affect populations. Cardoni et al., (2020) stated that to minimise such incident and create fairer algorithms, companies are adopting constant monitoring and auditing procedures. Directors could be subjected to breach of fiduciary duty if they rely on the AI system without sufficient knowledge on how the system operates (Sarkar & Smith, 2025). Moreover, leaving the decision making to AI could result in inaccurate recommendations and exposed the company to legal action. It remains uncertain as to who should be liable in this situation. The uncertainty has prompted for a clear standard and regulation to guide the application of AI in corporate governance (Mirishli, 2025). Other associated risks in Environmental, Society and Governance (ESG), AI systems can support ESG initiatives such as carbon footprint tracking or social impact assessments—but may also exacerbate social risks, such as discrimination in automated hiring or surveillance of employees.

To sum up, AI presents significant opportunities to improve the effectiveness of corporate governance but there is also the need for the board to acquire new skills, establish good governance structures and implement appropriate legal protection. Failure to do so may harm their reputation and could subject them to legal consequences.

Lack of Legal Clarity in Directors' Duties on AI and ESG

The Covid-19 pandemic has accelerated the growing focus on the way the company makes decisions. A good governance practice would require the company to consider various stakeholders' interests in making the decision, especially when the investors have shifted their paradigm from purely on the value of the shares to the broader agenda on sustainability. In fact, studies have shown that companies that adopted good ESG performance obtained good financial results (Kell, 2018). The inclusion of ESG (Environment, Social and Governance) factors covering a wide spectrum of issues which traditionally are not part of financial relevance in the decisionmaking is consistent with the stakeholders' wealth maximisation theory.

In the light of the emergence of AI technologies and the growing emphasis of ESG, the field of directors' duty are undergoing significant transformation. The current position on director's duty is largely based on the shareholders' wealth maximisation theory which equates the company interests as shareholders' interest. Therefore, there is a critical gap in clarity regarding how the law on directors' duty should adapt to the current development (Gaske, 2025; Ortega, 2024). Bismuth (2023) argued that lack of definitive legal standards creates uncertainty in the aspect of liability and compliance. The ambiguity raises questions not only on possibility of breach but also the effectiveness of corporate governance frameworks (Andone & Leone (2022).

Traditionally, a company's focus in making a decision is on the shareholders. Under the law, the company's interests have been interpreted to be the interests of the shareholders. The shareholders' interests in the company take in the form of distributing income by receiving payment of dividends (in case the company makes profits) and buybacks of shares. This view stems from the notion that shareholders were regarded as the owners of the company and their interests were the only ones to be recognised as the object of the company's activity. The courts' decisions in *Re Smith and Fawcett Ltd* [1942] Ch 304 and *Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286 illustrated that company interests are akin to the shareholders' interests to maximise their wealth. The shareholders' wealth maximisation theory viewed a company as an association of shareholders formed for their private gain and to be managed solely by its board of directors for that purpose (Halpern, Trebilcock and Turnbull, 1980).

The stakeholders' theory rests on the idea of organizational management and ethics requiring management to reflect the interests of those whose contribution results in either promoting or frustrating the company's objectives (Phillips, 2003). It asserts that maximising shareholders' wealth is no longer suitable in the modern corporate structure since shareholders are not the only bearers of residual risks (Kelly and Parkinson, 2000). Discussion on this issue has intensified with the current development of industrial relations and economic theories (Corfield, 1998). Moreover, it also reflects the progressive and effective means of corporate governance since it involves considering the interests of various groups that form part of the company and the benefits that accrue to society. As such, stakeholder wealth maximization not only expands the scope of financial management activities but also embodies the essence of the modern enterprise. (Tian and Zhang, 2016). As such the stakeholder's theory is not inconsistent with legal development of directors' duty.

The conflict between these two theories heightens the difficulty of incorporating ESG into the existing frameworks. As such, each of these groups has stakes in the corporation with a different magnitude of claims in the company depending on the costs of producing the inputs (Mansor, 2011). Despite the positive feedback from investors on the company's decision to consider the interests of stakeholders in the company, the study conducted by the European Union (2020) showed that shareholders' supremacy still takes precedent in corporate decisionmaking. In addition to the short-term financial market pressures, company decision making often being made at the expense of more sustainable investments such as on research and development (R&D) and the development of the employees. Keay (2008) called for the legal standards that incorporate both considerations.

METHOD

The paper poses the question of whether the existing law on directors' duty is aligned with the advancement of AI technology and the growing importance of ESG and to answer the question, doctrinal legal research is

employed. The method involves the analysis of statutes, cases law and regulatory guidelines for the purpose of finding the development of directors' duties concerning AI and ESG. In addition, the legal position in the UK, Australia and Canada are analysed to highlight the best practice in directors' accountability for AI and ESG considerations.

The method is effective in clarifying legal principles and highlighting the legal gap in the existing law (Hutchinson & Duncan, 2012; Chynoweth, 2008). Directors must equip themselves with knowledge on AI and ESG to avoid liabilities and it is essential for the law to be clear. The results expected from this method includes an understanding of current legal obligations, the identification of gaps in the legal framework and the development of legal arguments. It allows the recommendations for legal reforms to ensure that the law on directors' duty is consistent with modern governance challenges. In addition, the findings contribute and enrich the jurisprudence by proposing interpretation in the area of directors' duty in light of influenced by AI and ESG (Hutchinson, 2010).

RESULTS AND DISCUSSION

The European Union Final Report (2020) in their findings discovered that most corporate governance frameworks and practices do not sufficiently acknowledge the interests of stakeholders. Although the study is conducted in the European countries (including the UK at the time of the research), the same could be said of the law on corporate governance i.e. the directors' duty in Malaysia since the law originates from England. Until today English law remains persuasive in the Malaysian legal system. Despite rapid changes in the economy today and the investors who seem to favour comprehensive considerations in the company's decision-making, the law is quite slow to respond to these new changes. The decisions of the courts indicate that the interests of the company are considering the interests of the shareholders.

While Section 213 of the Companies Act 2016 outlines directors' general duties, enforcement trends in Malaysia reveal limitations in practical accountability, especially regarding AI or ESG missteps. For example, Malaysian case law has yet to address a situation involving directors' negligence in overseeing AI applications, such as automated credit profiling or hiring algorithms. The absence of case precedents on algorithmic harms places directors in a grey area of liability. Similarly, ESG misreporting—such as underreporting environmental risks or supply chain abuses—remains largely governed by reputational risk rather than statutory sanction, unlike developments in jurisdictions like Canada or the EU where mandatory sustainability disclosures are judicially enforceable.

Position in Malaysia

Section 213(1) of the Companies Act 2016 incorporates the duty of a director to exercise powers for proper purpose and to act in good faith for the interests of the company. Section 213(2) incorporates the common law duty to exercise reasonable care, skills and diligence. The section also imposes criminal sanction under section 213(3) to imprisonment for a term not exceeding five years or to a fine not exceeding RM 3 million. The Act is silent on whose interests is considered as the interests of the company.

The courts, when interpreting the section, focus on shareholders' primacy and stress the importance of considering the interests of shareholders in making decisions. There is no specific mention of the use AI and the inclusion of ESG consideration in the sections. However, the Bursa Malaysia Sustainability Reporting Guidelines require listed companies to include in their annual report a sustainable statement which requires the inclusion of ESG. This is to promote sustainable practice and to ensure transparency and enhance disclosure to stakeholders and regulators. Although these guidelines have no direct legal implications, it is essential for listed companies to comply to maintain listing status and investors' confidence.

The duty to act in the interests of the company is wide enough to cover the interests of various stakeholders in the company; the duty to determine the parameters of such interests falls on the courts. The judges have been known for their reluctance to depart from the traditional view that directors owe a duty to the company as a separate legal entity to act in the interests of shareholders. The reluctance stems from the judicial understanding

that judge's role is to interpret the law while the duty to make law is on the Parliament. This can be illustrated in the judgement of Tun Suffian LP in *Public Prosecutor v Datuk Harun bin Haji Idris* [1976] 2 MLJ 116, where his Lordship stated, "It is not the function of a judge to make law; that is the prerogative of Parliament. The duty of a judge is to expound the law as it stands." This position explains the need to have legislative intervention in incorporating the use of AI and ESG rather than relying on judicial innovation.

In addition to the court's acknowledging the interests of creditors when the company is insolvent, section 346 of the Companies Act 2016 recognises the right creditors (debenture holders) to bring an action against the company on the grounds that the affairs of the company have been conducted in a manner oppressive to debenture holders. The right, however, does not involve direct enforcement of breach of duty owed to the company and is predominantly used by minority shareholders. The law in Malaysia as it stands now is full of contradictions and to date, the full implication of section 346 has not been worked out (Mansor, 2011).

Since the provision is derived from Canada, it may be useful if reference is made to case law that allows and uses it. The Canadian Supreme Court in *BCE Inc. v 1976 Debenture holders* (2008) SCC 69. Debenture holders, which concern the allegation by debenture holders that the directors had acted oppressively when they approved the sale of the company, had to consider the duties of directors in circumstances where their decision would benefit some but not all stakeholders. The court rejected the debenture holder's claim and held that the directors had considered the interests of the debenture holders and if they required better protection, they could require it by contract. The judge stated that "*There is no principle that one set of interests — for example the interests of shareholders — should prevail over another set of interests. Everything depends on the particular situation faced by the directors and whether, having regard to that situation, they exercised business judgment in a responsible way*".

The decision seemed to suggest that the court is of the view that creditors can negotiate favourable contracts to protect themselves. The right in section 346 is of course given to debenture holders who in theory may be in an equal bargaining position with the company. In doing so, the rights of other creditors, particularly the unsecured creditors, to a certain extent are ignored by both the courts and statutes.

In respect of other stakeholders, the Companies Act 2016 imposes a duty on directors to prepare a director's report under section 252, in which directors must include in their business review information regarding environmental matters, employees, social and community issues. Under the section, directors who fail to take reasonable steps to comply with the requirement commit an offence and shall on conviction be liable to a fine not exceeding five hundred thousand ringgit or imprisonment not exceeding one year or both.

Section 253(3) provides that the directors' report which is prepared under section 252 may include a business review as set out in Part II of the fifth schedule or any other reporting as prescribed. The business review shall include information on the ESG such as:

1. Environmental matters, including the impact of the company's business on the environment;
2. The company's employees; and
3. Social and community issues;

Including information about any policies of the company in relation to those matters and the effectiveness of those policies;

Nevertheless, the extent of information included in the report is much to be desired where Phang (2021) stated that in the research conducted by KPMG shows that the quality of sustainability reports by public listed companies in Malaysia is unlikely to meet investors' need to assess environmental, social, and governance (ESG) risk. This is despite the evidence found by KPMG in 2020 that 99 of the top 100 public listed companies in Malaysia publish sustainability reports which are on par with global standards.

Section 246 of the Companies Act 2016 requires the directors to set up an internal control system (ICS) to safeguard the company's assets and financial reporting. This requirement is closely linked to the directors' duty to consider the interests of the company because the aim of the provision is to safeguard the assets of the

company. There is also a need for the company to establish a good risk management system. However, as stated by Ajmal, Othman and Mansor (2021) there is no legal requirement for public and private companies in Malaysia to have a proper Risk Management framework.

A business judgment rule introduced in the Companies Act 2016 to exonerate the directors of any breach of duty under section 213(2) and equivalent duties under common law. The directors are deemed to be discharging their care, skills and diligence duty if they make a business judgment rule under section 214. The section provides that directors are protected if they fulfil the following conditions:

- a) Made the judgment in good faith and for a proper purpose.
- b) Had no material personal interest in the decision.
- c) Made the judgment on an informed basis; and
- d) Reasonably believed the decision is in the best interests of the company.

This section is similar to section 180(2) of the Australian Corporation Act 2001 which provide a safe harbour for directors from duty of good faith. However, the Australian provision applies to directors and other officers of the company while in Malaysia it is only applicable to directors. Another difference with the Australian provision is that section 180(2) Corporation Act 2001 states that directors or officers “rationally believe that the judgment is in the best interests of the company” while in Malaysia section 214 in the Companies Act 2016 states reasonably believed is in the best interests of the company. Section 180(2) then continues and point out that “...the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.” Both provisions state similar definition of “business judgment” section 214(2) defines it as “any decision on whether or not to take action in respect of a matter relevant to the business of the company while section 180(2) provides the meaning of business judgment as “any decision to take or not to take action in respect of a matter relevant to the business operations of the corporations”.

The Australian section assumes that judgment is rational unless no reasonable person in the same position would hold such a belief which could be interpreted in two ways (Austin & Ramsay, 2010), firstly by using the common reasonable man test; whether a reasonable director in the same situation believes the judgment is in the best interests of the company. Secondly, it could be interpreted as whether a reasonable director in the same situation believes that the judgment is rational; hence it is in the interests of the company

Position in the United Kingdom

The UK Companies Act 2006 has incorporated this wider responsibility of directors who have a duty to promote the success of the company using the enlightened shareholder value model. This duty has replaced the duty to act bona fide in the interests of the company and when making decision, directors should balance between the interests of shareholders and stakeholders. The duty, however, does not digress from the paramount duty of a director to act for the benefit of its members. Directors are only required to consider the interests of those listed in the Act, in furtherance of the success of the company for the benefit of the shareholders, directors have to consider:

1. “The likely consequences of any decision in the long term.
2. the interests of the company’s employees;
3. fostering the company’s business with suppliers, customers and others
4. the impact of the company’s operations on the community and the environment.
5. the desirability of the company maintaining a reputation for high standards of business conduct; and
6. the need to act fairly as between members of the company.”

Generally, the power to enforce the provision still lies with the company (and the minority shareholders under the derivative action) and not with the stakeholders mentioned in the Act, which may present problems if the company refuses to take action on their behalf (Mansor, 2011). Further, the Act does not clarify how the duty

should be exercised if there are conflicts of interest between parties, and since the overriding duty is to the shareholders, directors may overlook the other stakeholders in this situation (Keay, 2008).

Clarke (2020) commented that section 172 had limited practical impact for two key reasons, namely that based on the established principle that the court will determine whether there is a breach of the director's duty on subjective rather than the objective test. Secondly, the section does not provide access to the stakeholders to enforce against the directors (Williams, 2014). Bamford (2019) argued that one way section 172 could be fulfilled by the company is by having suitable policies on environment. Smith (2021) proposed a slight amendment to section 172 in order to have a transformative impact on company law, directors' duties, corporate governance, and businesses and, ultimately, the economy, society and the environment.

Position in Australia and Canada

In Australia, the provisions on directors' duty adopts the shareholder primacy theory where the law remain focus on shareholders' interests which limits the need to incorporate ESG and AI unless it affects profits or regulatory risks. This is embodied in section 181 of the Corporations Act 2001 which imposes a duty on directors to act in good faith in the best interests of the corporations and for proper purpose. The courts nevertheless have in certain circumstances acknowledged the need for wider considerations to maintain the long-term sustainability of the company.

In Canada, section 122(1) of Canada Business Corporations Act codifies the fiduciary duty and requires directors and officers of the company to act in good faith in the best interests of the company and to exercise care diligence and skill which a reasonable prudent person would act in comparable situations. The Canadian model adopted a favourable stakeholder approach and listed factors need to be considered when acting in the best interests of the corporations similar to the UK provision in section 172. The Canadian Business Corporations Act listed the interests of shareholders, employees, retirees and pensioners, creditors, consumers, and governments. Other factors to be considered include the environment and the long-term interests of the corporation. The section permit the considerations of factors if it aligns with the corporation interests which may include the use of AI and ESG in decision making.

To draw actionable lessons for Malaysia, the comparative insights must move beyond descriptive parallels. The UK's enlightened shareholder value model under Section 172 of the UK's Companies Act 2006 could inspire statutory reform in Malaysia by embedding a duty to consider long-term environmental and societal impacts. Canada's inclusive stakeholder model also offers a pragmatic blueprint, demonstrating how directors can be legally obligated to consider a wider range of interests without compromising corporate focus. Malaysian reform can draw from these models by codifying stakeholder considerations into Section 213 of the Companies Act 2016 and introducing judicial review mechanisms for non-financial misconduct.

Comparative aspects of the law

The summary of these comparative aspects in Malaysia, UK, Australia and Canada are shown in Table 1

Table 1 Comparative aspects of the law

Jurisdiction	Statutory Provision	Model	AI/ESG Integration
Malaysia	Sections 213 & 214, Companies Act 2016	Shareholder Primacy	No specific provision. ESG disclosure via Bursa Guidelines. AI/ESG under general duty of care
UK	Section 172, Companies Act 2006	Enlightened Shareholder Value	Environmental/social factors listed. Directors must consider AI/ESG if material.
Australia	Section 181, Corporations Act 2001	Shareholder Primacy	No statutory duty. ESG/AI unless affecting profits or regulations.

Canada	Section 122(1), CBCA	Inclusive Stakeholders	ESG considerations required if aligned with corporate benefit. No direct AI duty but emerging recognition.
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The comparative aspects on the criticisms of the law in Malaysia, UK, Australia and Canada are shown in Table 2.

Table 2 Criticism of the law

Jurisdiction	Criticisms
Malaysia	No specific AI/ESG provisions; shareholder primacy prevails; Bursa guidelines lack enforcement; courts reluctant to extend duties
UK	Ambiguous language ("have regard to"); lack of enforcement; limited stakeholder rights; unclear conflict resolution.
Australia	ESG/AI duties reactive; no explicit ESG requirements; reliance on judicial interpretation.
Canada	Unclear alignment of stakeholder and corporate interests; evolving but uncertain standards for AI/ESG liability.

CONCLUSION

The current framework under the Companies Act 2016 does not sufficiently address the unique challenges posed by Artificial Intelligence (AI) and Environmental, Social, and Governance (ESG) considerations within the sphere of corporate governance. Although Section 213 outlines directors' fiduciary duties, its silence on AI and ESG responsibilities creates interpretive ambiguity. This legal uncertainty leaves directors without a clear statutory roadmap, raising serious questions about their obligations in managing emerging technological risks and sustainability imperatives. As a result, Malaysian companies may face exposure to regulatory blind spots, reputational damage, and erosion of investor confidence, particularly in an increasingly ESG-conscious and digitally-driven global market.

To maintain Malaysia's competitiveness and alignment with international standards, a proactive legislative response is essential. Reform should begin with the explicit incorporation of AI and ESG responsibilities into directors' duties under the Companies Act. This includes introducing statutory obligations for transparent sustainability disclosures, ethical oversight of AI use, and integration of long-term environmental and social considerations into corporate decision-making. Mandatory ESG and AI governance frameworks would not only clarify directors' responsibilities but also enhance the resilience and credibility of Malaysian corporations.

Additionally, legal reforms must establish robust enforcement mechanisms. This includes creating avenues for judicial review of non-financial misconduct, enabling stakeholders such as employees, consumers, or environmental groups to seek redress where corporate decisions result in harm. Enhanced accountability through regulatory oversight, penalties, and civil liability provisions will ensure that directors are not only incentivized to comply, but also held accountable for failures in ESG or AI governance.

Ultimately, modernizing Malaysia's corporate governance regime requires shifting from reactive compliance to a principled, forward-looking approach that reflects evolving stakeholder expectations and global governance norms. By embedding these changes into statutory law, Malaysia can foster responsible corporate leadership equipped to navigate the complexities of AI and sustainability in the 21st century.

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