ARTIFICIAL INTELLIGENCE IN CORPORATE GOVERNANCE

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Abstract. The prevalent artificial intelligence (AI) applications of today merely exemplify the full potential of artificial intelligence in the business realm. Artificial intelligence is poised to assume a general role in the management of companies, as it is increasingly being used as a tool to support the administrative work and decision-making of directors and managers. While the appointment of a robotic director may still seem like science fiction, the widespread use of artificial intelligence in corporate governance has proven to streamline the decision-making process. In general, corporate laws around the world are still based solely on human decision-making and deny the role of technology in corporate governance. This results in ineffective regulation strategies for artificial intelligence systems with managerial authority. As a result, there is uncertainty about the legal permissibility and legal implications of implementing artificial intelligence in the corporate sphere, which may discourage corporations from adopting artificial intelligence, even though the technology is likely to optimize the business process. This article aims to highlight the growing importance of artificial intelligence in corporate governance, with a focus on the development of a legal framework and general provisions on the legal position of artificial intelligence. The article offers a legal analysis of the potential role of artificial intelligence in the corporate lawyer's legal work, focusing on potential risks and ways to minimize them.

Keywords: artificial intelligence, corporate governance, liability, legal capacity, confidentiality.

ИСКУССТВЕННЫЙ ИНТЕЛЛЕКТ В КОРПОРАТИВНОМ УПРАВЛЕНИИ

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Аннотация. Популярные сегодня приложения искусственного интеллекта (далее — ИИ) являются лишь демонстрацией всего потенциала ИИ в деловом мире. Искусственный интеллект находится на грани того, чтобы взять на себя общую роль в управлении компаниями, поскольку он неуклонно становится инструментом поддержки

административной работы и принятия решений директорами и менеджерами. Если назначение роботизированного директора все еще кажется научной фантастикой, то широкое использование ИИ в корпоративном управлении доказало, что оно рационализирует процесс принятия решений. В целом корпоративное законодательство по всему миру по-прежнему основывается исключительно на принятии решений человеком и отрицает роль технологий в корпоративном управлении, что приводит к неэффективным стратегиям регулирования в отношении систем ИИ, наделенных управленческими полномочиями. В результате существует неопределенность в отношении юридической допустимости и правовых последствий внедрения ИИ в корпоративной сфере, что может отбить у корпораций желание внедрять ИИ, даже несмотря на то, что технология, несомненно, оптимизирует процесс ведения бизнеса. Таким образом, в данной статье предпринята попытка подчеркнуть растущую важность ИИ в корпоративном управлении на примере разработки нормативно-правовой базы и общих положений о правовом положении ИИ. В статье проводится правовой анализ потенциальной роли ИИ в юридической работе корпоративного юриста, уделяя внимание потенциальным рискам и способам их минимизации.

Ключевые слова: искусственный интеллект, корпоративное управление, ответственность, правосубъектность, конфиденциальность.

The modern era has brought about new conditions. All spheres of life are now inextricably linked to the use of the latest digital systems and artificial intelligence systems. The introduction of artificial intelligence systems is becoming increasingly prevalent in a number of sectors, including retail, industry, sports, law, healthcare, and many others. In the context of jurisprudence, it is worth considering corporate law. It is a crucial area for the stable operation of the fuel and energy sector. In general, corporate governance is the basis of companies' activities. This sphere is one of the promising areas for the development and implementation of artificial intelligence systems. The primary objective in the implementation of these technologies is to streamline corporate governance systems and maximize benefits at the lowest cost. However, it is crucial to exercise control over the development and subsequent application of these technologies, as the creation of a "machine" capable of self-learning could potentially yield unforeseen outcomes in the future. This is why there are discussions in the global community on the topic of artificial intelligence. Disputes arise in both ethical and technological spheres. For the legal sector, it is important to strike a balance and legislate the most important principles of development and use of artificial intelligence systems. The key challenge in the current landscape of advanced information technologies is to maintain stability and security.

The significance of artificial intelligence and the priority of its development are clearly demonstrated by the adoption of legal instruments at the federal level. In 2020, the Government of the Russian Federation separately developed and adopted the Artificial Intelligence federal project. Now, all development activities and legal regulation should be performed in accordance with the general project on the statutory regulation of the digital environment [1]. The initial focus for development was set with the issuance of the first regulatory act dedicated to artificial intelligence: the Decree of the President of the Russian Federation on the Development of Artificial Intelligence in the Russian Federation, which approved the National Strategy for the Development of Artificial Intelligence [2], establishing the framework for further development and use of artificial intelligence systems.

The development of artificial intelligence impacts the following areas:

1) protection of human rights and freedoms: inadmissibility of violations, protection of rights established by law, and provision of opportunities for learning and adaptation for life in changing conditions;

2) ensuring safety: prohibition of the use of artificial intelligence to cause intentional harm and the need to prevent adverse consequences from the use of these technologies;

3) transparency: non-discrimination in access to the products created and the explanation of the process of artificial intelligence;

4) technological sovereignty: preferential use of domestic technologies and ensuring the country's independence in this area;

5) innovation cycle integrity: ensuring the interaction of science with the real economy;

6) reasonable thrift: preferential adaptation of existing designs;

7) support for competition: prohibition of actions that restrict competition between Russian entities operating in the field of artificial intelligence.

The development of a legislative framework to regulate the use of artificial intelligence systems is one of the most important tasks facing the modern regulator, as it can help to prevent potential issues associated with the use of modern digital technologies. However, it is important to maintain a balance between private and public interests. Rigid and redundant rules may have a negative impact on the development of artificial intelligence in the country. This could hinder access to new technologies in this field, slow down the development of artificial intelligence in Russia, and contribute to the reduction in the number of specialists. The personnel issue in the field of IT technologies is a significant challenge. Valuable researchers and organizations engaged in artificial intelligence may opt to relocate to other countries where they will have greater freedom to conduct research and development.

An alternative to restricting artificial intelligence could be the efforts of the Russian legislature to create mechanisms ensuring the safe use of the technology and protecting consumers. It appears that optimal approach would be to establish a separate body with the responsibility of regulating the use of artificial intelligence, or alternatively, to develop standards and guidelines that promote the safety and ethical use of this technology.

A start has been made with the development of a comprehensive set of recommendations, the Code of Ethics for Artificial Intelligence. In cooperation with the Government, Russian business has created and approved the aforementioned code. It was supported by a number of prominent Russian companies, including Yandex, VK (formerly Mail.ru Group), Sber, MTS, Rostelecom, InfoWatch, and Cian. The Government Analytical Center and the Ministry for Economic Development also contributed to the creation of the document. The Code of Ethics for Artificial Intelligence is a comprehensive set of recommendations and rules designed to promote the development of reliable technologies in Russia. It is intended for all parties involved in the creation, implementation, or use of artificial intelligence technologies, including government agencies, academia, and business.

The Code offers practical guidance for ethical decision-making and risk minimization in the context of the creation and use of artificial intelligence that may violate the rights and interests of human beings. The Code also underscores that the accountability for the outcomes of AI use always lies with the human, not the machine.

In order to fulfill the requirements of the Code, a committee will be formed from representatives of business, academia, and government agencies. Organizations that have supported the document will appoint AI ethics specialists to monitor company compliance with the Code. The most controversial matters will be discussed by an internal committee established within the companies.

It is important to note that in order to build further regulation, the question of the legal capacity of artificial intelligence should be addressed. As previously stated, artificial intelligence is currently a legal object, i.e. a thing to which the relevant provisions of law apply. However, as technology continues to evolve, the question of whether to grant artificial intelligence the status of a legal subject may become increasingly relevant. A number of options have been put forward, including electronic persons or agents capable of representing the interests of both individuals and legal entities. Those who hold opposing views argue that it is not feasible to confer subject status upon it. Instead, they propose the creation of a distinct type of property to account for the unique characteristics of artificial intelligence [3].

According to a number of legal scholars, it is already possible to formulate a set of fundamental principles that should inform the development of legislation. These include the priority of human rights, the guarantee of transparency of information on the development and implementation of new technologies, the prohibition of discrimination in access to artificial intelligence, and the right of individuals to choose whether or not to interact with artificial intelligence systems.

The aforementioned principles are fundamental, so it is imperative to include in the Constitution the

issues of human rights protection in view of the introduction of new technologies. The integration of artificial intelligence into the life of society is inevitable, and therefore it is necessary to make this process as safe and transparent as possible. After analyzing the positions and studying the works of constitutional scholars [4], we can identify the main areas of concern for constitutional law as artificial intelligence becomes more widely integrated.

The first and primary block of issues is the protection of human rights. It is evident that legislation should prescribe the fundamental guarantees for the protection of the human right to privacy.

The second block of issues is the prohibition of discrimination. Studies have shown that trained artificial intelligence can discriminate against certain categories of citizens, which will only exacerbate the global problem of discrimination. It is therefore necessary to implement monitoring procedures for artificial intelligence systems to ensure they do not discriminate and to provide citizens with the necessary guarantees to protect them from such discrimination.

The third section of issues is the transparency of the operation of artificial intelligence systems. Many people lack understanding of the principles of operation of artificial intelligence systems, which may lead to a perception of these technologies as a direct or potential threat. It is therefore important to formalize the principle of openness of algorithms and transparency of their work. Consequently, there will be a number of other rights requiring proper documentation:

— the right to know the reasons for the judgment rendered by the system;

— the right to know about the nature of the subject with whom the human being comes into contact;

— the right to choose the subject making the decision (made by artificial intelligence or with human participation).

The fourth block of issues highlights the legal capacity of artificial intelligence as a key concern. Depending on the trajectory chosen by the relevant state, there will also be an issue of formalizing the rights and obligations of artificial intelligence, should it be recognized as a legal subject. In 2019, a scientist from Harvard University published an article discussing the topic of formalizing the right of artificial intelligence to self-destruction. This may prompt the idea of formalizing the rights of artificial intelligence

systems (if they are recognized as a subject) in the country's main law [5].

As previously stated, artificial intelligence is currently a legal object, yet there are already discussions about its potential statuses. For example, the European Parliament adopted a resolution in 2017 that proposes to grant the status of an electronic person or personality to artificial intelligence systems [6]. In considering the issue of recognizing artificial intelligence as a legal subject, it is worth noting the criteria that are distinguished in legal science for determining a legal subject. These include consciousness, will, emotions, independence in decision-making, and guiding one's actions. Another criterion is the so-called concept of legal entity fiction as a means of risk management and limitation of property liability [7]. When applying these criteria to AI systems, it is clear that, for example, a robot cannot have feelings or emotions, and therefore cannot be initially considered an identical legal subject to a person. It appears that there are no obstacles to the use of such legal techniques as fiction, analogous to those employed in the context of legal entities. Consequently, if we recognize artificial intelligence as a special electronic person, we can apply the regulations that are tailored to legal entities by analogy.

Should the decision be made not to recognize artificial intelligence systems as a legal subject, they could be recognized as a special type of property. For example, animals that can act independently but whose owner is held liable for their actions could be classified as a special type of property. The situation is similar here, but there is another potential issue where investment may decline if all liability is shifted to the owner [8].

However, regardless of the decision made on the recognition of artificial intelligence as a legal subject or object, it is clear that AI is playing an enormous role in simplifying and optimizing legal work in general. Automation of tasks and processes allows for cost reduction and increased productivity. To achieve the full potential of artificial intelligence, in-house lawyers should first stay abreast of the technology and embrace new ways of working.

In practice, however, we encounter the challenge that in a profession with a reputation for resilience to change, many corporate lawyers are not yet familiar with what artificial intelligence means, let alone how it can strengthen their legal practice. Among those who are aware of AI technologies, there is a prevailing skepticism about reliability, especially when it

comes to privacy and ethical concerns [9]. Despite these doubts, a significant number of corporate lawyers recognize the potential of artificial intelligence to assist legal departments in reducing costs, developing more robust business strategies, minimizing contractual risks, and improving the delivery of legal services.

For large holding companies in the fuel and energy sector, the process of introducing new technologies in management is becoming inevitable, as it is now the main way to optimize costs and focus on development. When implementing artificial intelligence in view of the fundamental principles of security, confidentiality, and reliability, the systems can become stable partners in corporate relations within companies [10]. For example, the use of artificial intelligence systems can lead to notable enhancements in the following areas.

1. Legal research. In the past, lawyers would invest a great deal of time studying articles of incorporation, legal cases, regulations, and other documents in order to find relevant information. The advent of AI-powered research tools has made it possible for legal professionals to quickly analyze vast amounts of legal data, identify relevant cases, and retrieve important information. By outsourcing search and research tasks, lawyers can free up time to focus on more complex analysis and strategic planning.

2. Due Diligence and contract analysis. Labor-intensive tasks that require close attention to detail include reviewing contracts and conducting comprehensive due diligence. AI-based contract analysis tools can now analyze contracts, identify potential issues, and extract important clauses that require approval or additional review. This allows corporate lawyers to increase their efficiency by reducing the time spent on proofreading and analysis. There is now a resource for substantive review and decision-making.

3. Automation of routine tasks. Routine administrative tasks can be performed automatically through the use of artificial intelligence systems, relieving corporate lawyers of time-consuming and repetitive work. AI-based tools can streamline document creation, contract drafting, and legal document collection.

4. Compliance. Artificial intelligence algorithms can analyze vast amounts of data, eliminating the potential risk of non-compliance with changing legislation. In today's rapidly changing regulatory environment, such algorithms are particularly relevant. They help corporate lawyers stay abreast of new laws and regulations that affect companies and large holdings by constantly monitoring regulatory developments and court rulings.

5. Forecasting and legal analytics. AI-based legal analytics tools can offer predictive analytics and assist lawyers in determining the likely outcomes of adopting a particular strategy by examining previous cases, court decisions, and legal precedents. This enables the creation of an optimal plan to resolve legal issues, make informed decisions, and provide businesses with an accurate assessment of possible outcomes.

However, it is important to note that, while artificial intelligence offers numerous benefits, it also presents ethical and professional challenges. As artificial intelligence becomes more integrated into the legal profession, corporate lawyers will face new ethical and professional challenges. Data privacy, algorithmic bias, and the question of who is responsible for legal advice generated by artificial intelligence are just some of the issues that need to be scrutinized and regulated [11]. Lawyers are also concerned that AI algorithms do not provide transparency into the data used to generate a response, making such results uncontrolled and often unreliable in circumstances where accuracy is paramount.

The data on which artificial intelligence is trained may be subject to bias, which could result incorrect inputs leading to incorrect or even discriminatory responses.

It is the responsibility of corporate lawyers to work through these issues in order to ensure that artificial intelligence is applied ethically and in accordance with legal and professional standards. Based on this research, we have identified three common risks in the use of artificial intelligence and suggested ways to minimize them in the work of corporate lawyers at large holding companies.

1. **Data leakage and security.** If a lawyer inputs confidential information about a counterparty or their company into an artificial intelligence system, it becomes part of the data model for self-learning and analysis. This means that others may potentially access it through similar queries [12]. Such actions may result in data leakage and may contravene data storage requirements. This could have a detrimental impact on national security, particularly if the organization has a direct or indirect relationship with the state.

Risk minimization. Refrain from disclosing any confidential or potentially confidential information. This precaution helps to reduce the risk of data leakage and security breaches. However, if the need for accurate information is paramount, it is essential to implement security measures, including encryption and access control, to address privacy and AI liability issues. The establishment of clear policies for data handling and user education serves to mitigate the risks.

2. **Intellectual property issues.** Determining ownership of rights to code or text generated by artificial intelligence can be a complex issue. In the majority of cases, when using chatbots and existing artificial intelligence systems on terms of service, the liability for output lies with the input provider [13].

Risk minimization. Implementing comprehensive tracking systems helps determine origin and compliance. Collaborating with legal experts ensures compliance with intellectual property laws, reducing the risk of disputes.

3. **Liability for erroneous results.** The use of artificial intelligence carries the potential risk of liability for companies. If the results generated by artificial intelligence leads to inaccurate, negligent, or biased results that cause harm, the company may be held liable for damages [14]. Consequently, organizations should implement rigorous testing procedures to ensure the reliability and accuracy of artificial intelligence by evaluating the accuracy, validity, completeness, and efficiency of the generated work product.

Risk minimization. To address tort liability, it is essential to develop transparent guidelines for the development of artificial intelligence, user training, and regular risk assessments. It may be advisable to consider the possibility of regulating liability insurance for those who use AI systems.

In general, corporate law is an area where precision and nuance are of the utmost importance. As such, organizations will likely continue to engage human lawyers for confidence in their expertise and for the ability to control. However, the benefits of using artificial intelligence for legal services in corporate governance are significant enough to warrant consideration. The author believes that the use of artificial intelligence will enable lawyers to more effectively promote and substantiate their positions, provide a better experience for clients, and focus on strategic decision-making. This, in turn, will lead to increased productivity and value in the corporate legal industry.

In conclusion, it is clear that the state has a significant role to play in establishing a legal framework that meets the needs of modern digital society. Summing up the research conducted, it is important to note that despite the lack of established comprehensive regulation, it is essential to minimize the risks for individuals and the society as a whole when creating future regulations for artificial intelligence technologies. These technologies are not yet a fully explored type of systems and may harbor unforeseen dangers.

The fuel and energy sector is advancing at an unprecedented pace, underscoring the need to enhance legal oversight for the safe and informed deployment of new technologies in this strategically vital area, including corporate governance in energy companies.

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