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CAN AN INDEPENDENT DIRECTOR OUTSOURCE JUDGMENT TO AN AI TOOL?

~ Neel Akash Sinha & Anusheeka Roy

ABSTRACT

Directors now have tools that can summarise a four hundred page board pack in seconds, and the temptation to lean on them is obvious. This paper asks how far an independent director of an Indian company can go. We argue that the Companies Act, 2013 allows a director to be helped by an AI tool but never replaced by one. Sections 166(3) and 166(6) tie independent judgment to the person holding the office, and section 149(12) leaves her diligence open to examination even when her knowledge cannot be proved. Comparing Delaware, the United Kingdom, Australia and the European Union, we show that the law protects reliance on experts because experts can be held accountable, which an AI tool cannot. We discuss fabricated output, opacity, confidentiality, management's influence over the tool and the risk that many boards end up using the same model. We then propose a short three-question test, comprehension, contestation and documentation, for telling lawful help from outsourcing, and suggest reforms for the Ministry of Corporate Affairs and SEBI.

Keywords: *independent director; artificial intelligence; fiduciary duty; section 149(12); delegation; corporate governance*

INTRODUCTION

Picture a director on the night before a board meeting. The pack runs to four hundred pages. She pastes it into a generative AI tool, asks which five issues deserve her attention, reads the reply and votes the next morning on that basis. Is the vote still hers?

We argue that it is not, if the tool did the thinking. Indian company law lets a director use AI as an instrument, but it does not let her use it as a substitute for her own evaluation. The

difference matters in practice, because it decides whether a director under scrutiny can shelter behind section 149(12) of the Companies Act, 2013, or whether her use of the tool becomes evidence that she was not diligent. By 'AI tool' we mean generative systems and analytical models that summarise, score or recommend. SEBI has only proposed guidance on AI so far, so we treat it as a sign of direction and not as binding law.[1]

II. THE STATUTORY FOUNDATION

The Act expects a board of individuals and defines an independent director through integrity, expertise and the absence of material ties to the company.[2] Three provisions then make the duty personal. Section 166(3) asks every director to act with due and reasonable care, skill and diligence and to exercise independent judgment. Section 166(6) says a director may not assign her office, and any assignment is void. A breach can attract a fine of one to five lakh rupees.[3] Schedule IV adds that independent directors help bring independent judgment to board discussions on strategy, performance, risk and standards of conduct.[4]

The reasoning is easy to follow. Management holds the information and has a stake in the outcome. The independent director is there to give a second view from someone who gains nothing either way. If software supplies that view, the board has a summary but has lost a director. Section 166(6) also covers substance: a director who lets something else decide her vote has given away the work of the office while keeping the title.

None of this demands omniscience. Directors have long been allowed to trust officials to do their jobs honestly, and Schedule IV itself expects independent directors to seek clarification, take professional advice when needed and stay informed.[5] Ch 407 (CA); Companies Act 2013, sch IV, pt III, cls 2, 7.] What counts is what the director does with the help.

III. ASSISTANCE VERSUS OUTSOURCING

AI use is not one thing. At the light end is clerical help, such as searching a document or translating a clause. Next comes synthesis, where a tool summarises papers or lists red flags. Then comes analysis, where it scores a counterparty or models a valuation. At the far end is determination, where the output simply becomes the vote. The first is harmless. The second is

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[1] SEBI, 'Consultation Paper on Guidelines for Responsible Usage of AI/ML in Indian Securities Markets' (20 June 2025).

[2] Companies Act 2013, ss 149(1), 149(6).

[3] Companies Act 2013, s 166(3), (6), (7).

[4] Companies Act 2013, sch IV, pt II, cl 1.

[5] *Re City Equitable Fire Insurance Co Ltd* [1925

fine if material points are checked against the source. The third can feed a decision if she can test it. The fourth is the handing over of judgment that sections 166(3) and 166(6) rule out.

A plain test separates them: can the director give reasons that are her own? One who traced a flagged pricing anomaly back to the underlying schedule and judged it justified has used the tool as an instrument. One who can only say the tool rated the deal acceptable has passed on someone else's conclusion.

People often compare AI to a lawyer or accountant whose advice a director may rely on. The comparison flatters AI. A human expert is chosen for competence, answers to a professional body, is usually insured, and can be questioned and blamed if things go wrong. A general-purpose AI tool offers none of that. Because of this gap in accountability, the director must supply the accountability herself, so leaning on AI calls for more care than leaning on an expert, not less.

IV. COMPARATIVE PERSPECTIVES

Delaware gives directors a safe harbour when they rely in good faith on reports from officers, committees and experts they reasonably believe competent and who were chosen with reasonable care, but the reliance must be informed and cannot be blind.[6] That provision speaks of persons, and Delaware directors must themselves be natural persons, so commentators argue that reasonable reliance runs through the people who check an AI output and not through the output itself.[7]

English law pairs a duty of independent judgment in section 173 of the Companies Act 2006 with a duty of reasonable care, skill and diligence in section 174.[8] The courts have said that directors must inform themselves about the company's affairs and remain responsible for supervising what they delegate, and a director who signed an insurance proposal form without reading it fell below the standard.[9] 1 BCLC 433 (Ch), appeal reported at [2000] 1 BCLC 523 (CA); *Re D'Jan of London Ltd* [1994] 1 BCLC 561.]

Australia is the most direct. Section 189 of the Corporations Act 2001 (Cth) protects reliance on advice only if it is in good faith, follows an independent assessment of that advice and is

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6 Delaware General Corporation Law, 8 Del C § 141(e); *Smith v Van Gorkom* 488 A.2d 858 (Del 1985).

7 8 Del C § 141(b); Chelsea Marie Mojica, 'AI In The C-Suite: Rethinking Director Reliance Under DGCL § 141(e)' (*Richmond Journal of Law and Technology*, 21 January 2026) <https://jolt.richmond.edu/?p=12219> accessed 5 November 2026.

8 Companies Act 2006, ss 173, 174.

9 *Re Barings plc (No 5)* [1999

reasonable, and the Federal Court has said directors cannot simply assume others have checked the financial statements.[10] FCA 717.] An independent assessment is the very thing missing when AI output is accepted wholesale.

The EU's Artificial Intelligence Act does not deal with directors' duties. Still, for high-risk systems it wants human overseers who stay alert to automation bias and can set aside or override the output, and it asks for AI literacy among users.[11] OJ L 2024/1689, arts 4, 14.] SEBI's 2025 proposal points the same way, stressing human oversight and warning market participants against blaming AI providers (n 1).

V. LIABILITY UNDER SECTION 149(12)

Under section 149(12), an independent director is liable only for company acts that occurred with her knowledge, attributable through board processes, and with her consent or connivance, or where she had not acted diligently. The Ministry of Corporate Affairs has called the provision a non obstante clause and cautioned against proceeding against independent directors unless its conditions are met on evidence.[12] Commentators note that tribunals have leaned on the knowledge limb and neglected diligence, and in the similar setting of dishonoured cheques the Supreme Court has asked for specific allegations about a non-executive director's actual role.[13]

AI adds a new fact to that inquiry. Knowledge is attributed through the board papers. Suppose a red flag sat in an annexure she never read because the tool summarised only the main text. She can hardly claim ignorance of what was in her hands. Her better argument is diligence, which is judged by what a reasonable director would do with material of that importance. An AI summary with spot checks may do for a routine item, but not for a related party transaction or a restatement. Diligence grows with materiality, and the use of AI becomes one of the facts from which it is judged.

The paper trail matters either way. A director who used AI to spot anomalies, checked each against the source, questioned management and had unresolved concerns minuted, as Schedule

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[10] Corporations Act 2001 (Cth) s 189; *ASIC v Healey* [2011

[11] Regulation (EU) 2024/1689 [2024

[12] Companies Act 2013, s 149(12); Ministry of Corporate Affairs, General Circular No 1/2020 (2 March 2020).

[13] 'Liability of Independent Directors: Addressing the Forgotten Diligence Test' (*CBCL, NLIU*) <https://cbcl.nliu.ac.in/?p=7275> accessed 5 November 2026; *Pooja Ravinder Devidasani v State of Maharashtra* (2014) 16 SCC 1.

IV expects, holds good evidence of diligence.[14] One who simply deferred to a summary has handed the other side its case.

VI. THE PRINCIPAL RISKS

We see five main risks. The first is fabrication. In *Mata v Avianca* lawyers were sanctioned for filing a brief citing cases a chatbot had invented, and in *Moffatt v Air Canada* a tribunal refused to treat a chatbot as a separate entity and held the company liable for what it said.[15] A director who adopts a tool's output adopts its mistakes. The second is opacity: when a model's reasoning is hidden, the only check is outside evidence. The third is confidentiality. Board papers often hold unpublished price sensitive information, and both the insider trading regulations and Schedule IV restrict its disclosure, so uploading papers to a consumer service is a compliance problem.[16] The fourth is capture. A tool that management supplies, or that sees only management's documents, shows the director management's version of events. The fifth is correlated error. SEBI has already flagged dependence on a few AI providers (n 1), and if independent directors on many boards use the same model, their supposedly independent judgments may share the same blind spots.

VII. THE THREE-QUESTION TEST AND REFORM

From all this we draw a test that boards, regulators and courts can use. The first question is comprehension: can the director explain in her own words why she decided as she did, and what the output relied on and left out? The second is contestation: did she challenge the output by checking material points against primary documents, getting a second view from a human expert or another tool, and pressing management? The third is documentation: can she show what she did, through a record of the tool, the inputs, the checks and any concerns minuted? Section 149(12) puts diligence in issue, and diligence that cannot be shown is hard to prove. The test scales with materiality and bites hardest on related party transactions and financial reporting.

Four reforms would reduce uncertainty. The Ministry of Corporate Affairs should clarify, in Schedule IV or a circular, that independent judgment cannot be delegated and that AI may be used as an aid subject to the director's own verification. SEBI should issue guidance under the Listing Regulations on confidentiality, minimum safeguards for tools and disclosure of

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14 Companies Act 2013, sch IV, pt III, cl 6.

15 *Mata v Avianca Inc* 678 F Supp 3d 443 (SDNY 2023); *Moffatt v Air Canada* 2024 BCCRT 149.

16 SEBI (Prohibition of Insider Trading) Regulations 2015, regs 2(1)(n), 3; Companies Act 2013, sch IV, pt III, cl 13; Digital Personal Data Protection Act 2023.

material AI reliance. Regulators should treat documented, verified use of AI as evidence of diligence under section 149(12) and undocumented reliance as no defence. Board evaluation under Schedule IV should cover AI governance.

VIII. CONCLUSION

Can an independent director outsource judgment to an AI tool? No, though she may certainly use one. Sections 166(3) and 166(6) require personal judgment, and section 149(12) keeps her diligence open to scrutiny. Delaware, England, Australia and the EU all assume that a human must remain the author of the decision. Independent judgment is valuable because someone accountable formed it, and an AI tool owes the company no duty. Judgment can be assisted, but it cannot be delegated.