



Corporate Governance: How Do Boards Balance Fiduciary Duties With Rapid Commercial Innovation?

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Changes in the last decade such as unprecedented artificial intelligence (AI) technology advancements have led to changes in stakeholder expectations. Businesses are now under constant pressure to develop new products, embrace emerging technologies and respond rapidly to changing customer expectations. In many industries, the greatest risk is no longer innovating too quickly but failing to innovate at all. Today, innovation is no longer a competitive advantage enjoyed by a select few - it has become a commercial necessity.

In this new landscape, boards are presented with a difficult governance dilemma: how do they balance risk and reward? While they owe fiduciary duties to act in the best interests of the company, evolving markets now require companies to make decisions with imperfect information and invest in opportunities whose outcomes cannot be guaranteed. Therefore, the real question now is how do boards reconcile being cautious while simultaneously being able to make risky decisions?

The Board's Fiduciary Duty Of Care In the Changing Landscape

Under Section 213 of the Companies Act 2016 (CA 2016), directors must exercise their powers with reasonable care, skill and diligence, in the best interests of the company.¹ Recognizing business judgments require risk-taking, Section 214 provides a layer of protection for directors by incorporating the 'business judgment rule'.

¹ Section 213 of the Companies Act 2016; Malaysian Code of Corporate Governance (Practice 10.1)

The business judgment rule is a legal principle that protects directors from personal liability for decisions even if the decision turns out to be wrong or causes loss to the company, which was affirmed by the recent Court of Appeal case of *Iris Corp Bhd v Tan Sri Razali Bin Ismail & Ors* [2026] 1 MLJ 807.

While it seems like the law encourages directors to take risks without the fear of personal liability, it isn't a wholesale exemption. To qualify under the rule, directors must satisfy the requirements under Section 214 of CA 2016, where business judgments must be made:

- for a proper purpose and in good faith.²
- in the absence of material personal interest.³
- under an adequately informed basis.⁴
- in the best interest of the company.⁵

The takeaway here is that while directors are not expected to predict every outcome or guarantee commercial success, they are expected to ensure appropriate governance processes to make an informed decision.

However, in an era of rapid technological and commercial change, are directors able to oversee innovation with such diligence and accountability?

Innovation As A Governance Issue

Commercial innovation was once viewed primarily as a business or operational function. Decisions relating to operation were largely driven by management, with the board providing strategic oversight at key decision points. Today, however, the pace and complexity of innovation have elevated it into a governance issue, for example:

- The loss of competitive edge, particularly against other AI/technology-driven companies.
- Inability to combat against security or cybersecurity risks.
- ESG risks and the inability to be sustainable long-term.
- Reputational risks resulting from mounting stakeholder pressure, leading to an image as a "slow and not innovative" company.

² Section 214(1)(a) of the Companies Act 2016.

³ Section 214(1)(b) of the Companies Act 2016.

⁴ Section 214(1)(c) of the Companies Act 2016.

⁵ Section 214(1)(d) of the Companies Act 2016.

In view of the above, boards should no longer treat innovation as an operational matter delegated entirely to management. Directors are expected to understand not only the commercial opportunities presented by innovation, but also the governance frameworks necessary to ensure that innovation is pursued responsibly and sustainably.

The Governance Misconception: Fiduciary Duties As A Barrier To Innovation

One of the most common misconceptions surrounding directors' duties is that they require boards to adopt a conservative approach and avoid all commercial risks entirely. This perception often creates the impression that governance and innovation are inherently at odds - that the more diligently a board seeks to discharge its legal obligations, the less willing it becomes to pursue transformative opportunities. The reality is, however, that the law recognises that commercial success often depends upon informed risk-taking.

New technologies may fail, markets may not develop as anticipated and regulatory frameworks may evolve after significant investments have already been made. The existence of uncertainty does not, in itself, prevent boards from approving innovative initiatives. Instead, fiduciary duties require directors to ensure that such initiatives are supported by appropriate due diligence and effective governance processes.

Ultimately, fiduciary duties regulate the quality of board oversight rather than the commercial outcome of the board's decisions. Viewed in this light, fiduciary duties should not be seen as constraints on innovation. Rather, they provide the principles that enable boards to pursue innovation responsibly.

The Risk Of Innovation Without Proper Governance

While boards should not allow fiduciary duties to discourage commercial innovation, the converse is equally true: innovation pursued without appropriate governance can expose organisations to significant legal, financial and reputational consequences. The issue therefore is whether innovation is supported by governance frameworks that can identify and manage the risks it creates.

Key business decisions such as adopting new technology often cut across multiple functions within an organisation and could create interconnected risks that may not be readily apparent at the outset.

For example:

- Adopting AI without a proper AI governance framework could expose the organisation to related digital, cybersecurity and also reputational risks.
- The lack of an effective risk governance framework structure may expose the organisation or the board to legal and compliance risks.

- The adoption of any new technologies without due diligence in ensuring proper usage may result in the organisation becoming prone to later risks such as overreliance

In short, when making a business judgment decision, risks that were initially viewed as operational issues may ultimately crystallise into regulatory investigations, litigation, financial losses or significant reputational damage.

These developments reinforce an important governance principle: innovation should not outpace oversight. Effective innovation requires more than commercial ambition; it requires clear accountability, appropriate internal controls, robust risk management and continuous oversight throughout the innovation lifecycle.

Conclusion

Commercial innovation and fiduciary duties are often portrayed as competing priorities. In reality, they are mutually reinforcing. Innovation enables businesses to remain competitive, resilient and responsive to changing market conditions, while fiduciary duties ensure that such innovation is pursued responsibly and in the long-term interests of the company. Good governance is therefore not measured by a board's willingness to avoid risk, but by its ability to understand, evaluate and oversee risk effectively.

As technological disruption accelerates and business models continue to evolve, boards can no longer afford to view innovation as a matter to be delegated entirely to management. Nor should directors assume that their fiduciary obligations require them to favour caution over commercial opportunity. Instead, effective boards recognise that their role is to provide strategic oversight, establish an appropriate risk appetite and ensure that robust governance frameworks evolve alongside the innovations they are expected to supervise. Fiduciary duties are not barriers to progress; they are the foundation upon which sustainable and responsible innovation is built.

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