

The background of the slide is a solid dark purple color, overlaid with a pattern of stylized, lighter purple leaves and branches. The leaves are simple, rounded shapes, and the branches are thin lines. The pattern is distributed across the entire slide, with some larger leaves on the right side and smaller ones on the left and bottom.

Digitization and AI in the Board Room in Japan

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1. What must board rooms do to regulate AI?
2. What impact will AI have on board rooms?
3. Need for Legislation?
4. Summary

The background is a solid light purple color. It is decorated with several stylized white floral and leaf motifs. In the top left, there are clusters of small, teardrop-shaped leaves. In the top right, there are larger, more complex floral shapes with multiple petals. In the bottom left, there is a branch with several rounded leaves. In the bottom right, there is a large, rounded leaf with a prominent vein. The overall aesthetic is clean and modern.

What must board rooms do to regulate AI?

■ Recruit Career Case

- Recruit Career sold an AI service which tells recruiting companies the probability of rejection of prospective employees
- Job hunting customs of Japan
 - Job hunting season starts from the fall of students' 3rd year
 - Students get offers from companies in the spring of 4th year
 - Outside of this season, recruiting and job hunting are rare
 - Students apply to a lot of companies, could receive several offers from companies, but choose only one of them

- This service caused legal problems
 - It violated the Act on the Protection of Personal Information
- Recruit Career stopped offering the service

■ JR East Case

- East Japan Railway Company (JR East) introduced AI surveillance cameras to detect parolees and convicted and released criminals who committed major crimes in the JR East stations
- It did not breach any statutes
- Because of public criticism, JR East stopped detecting parolees and released criminals

■ IBM JAPAN Case

- IBM Japan introduced AI called Watson to help decide the salaries of employees
- There is no apparent breach of the law
- Some of employees were dissatisfied because of Watson's lack of transparency
- Employees petitioned the Tokyo Labor Relation Committees for relief

■ Problems

- Legal problem
 - Recruit Career Case
- Ethical problem
 - JR East Case and IBM Japan Case

■ Legal Framework

- Duty of care
- Duty of loyalty

- Duty to comply with statutes
- Duty to do surveillance

■ Legal Framework

- Duty to introduce internal control systems
 - Systems to keep compliance of directors and employees (compliance systems)
 - Systems to manage the risk of loss (risk management systems)
- Internal control systems must be introduced to prevent wrongdoings that are generally foreseeable
- Directors have discretion in arranging internal control systems

■ Analysis of Legal Problems

- Duty to comply with statutes
 - Directors must not use AI technologies which breach the law
- Duty to introduce internal control systems
 - When AI poses a foreseeable wrongdoing, board of directors must introduce compliance system to deal with it
 - Board of directors have discretion in building a system

- Analysis of ethical problems
- Duty to introduce risk management systems
- It is not necessary for all companies to introduce risk management systems which deal with AI
 - There are several possible causes of loss for companies
 - Directors should have discretion in to which causes of loss they give weight
- In cases of companies whose main business concerns AI, they must introduce a risk management system for dealing with AI

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What impact will AI have on board rooms?

■ Ex Ante Use of AI

- Preventing illegal behavior of directors or employees is one of the main purposes of corporate governance
- AI can process all of employees' e-mails and find suspicious ones

■ Ex Post Use of AI

- AI is also used to find out if suspicious actions occurred after the fact
- Digital forensics is becoming more common in Japan to gathering information about suspicious incidents
 - AI is fed digital data such as documents and e-mails
 - AI analyzes them and find ones connected to an incident

■ Toshiba Case

- It was questioned if the shareholder meeting in 2020 was held properly
 - Some of its executives and employees were alleged to have put pressure on activist shareholders regarding voting with the help of the Ministry of Economy, Trade and Industry
- The investigators used digital forensics to analyze about 520,000 e-mails and 250,000 attached files

- Analysis of Ex Ante Use of AI
 - Must Board of directors introduce AI as a part of an internal control system?
 - If foreseeable wrongdoings can already be prevented without the use of AI, directors are not necessarily obliged to introduce it
 - There are relatively rare cases where directors are obliged to introduce AI as a part of compliance systems because of their discretion.

■ Analysis of Ex Post Use of AI

- Do directors have a duty to use AI as a duty of care or a duty to do surveillance?
- It depends on several factors
 - The plausibility of breach
 - The seriousness of it
 - The cost of digital forensic for the company
 - The alternative way of searching

- When must directors use digital forensics?
 - It is highly plausible a serious wrongdoing was done
 - The digital forensics are relatively low cost
 - No other effective way of searching is available

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Need for Legislation?

- Amendment of the corporate law is not necessary
- Corporate law has the framework to deal with problems caused by AI
- New legislation is needed for the particular usage of AI such as collecting personal data
- Corporate law can foster new legislation through directors' duties to comply with laws and to introduce internal control systems

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Summary

- What must board rooms do to regulate AI?
- What impact will AI have on board rooms?
- Need for Legislation