

COMMONWEALTH CLIMATE AND LAW INITIATIVE – LEGAL OPINION: *DIRECTORS’ OBLIGATIONS TO CONSIDER CLIMATE CHANGE-RELATED RISK IN INDIA*

16 September 2021

The Commonwealth Climate and Law Initiative (CCLI) has commissioned a [legal opinion](#), published today, by Mr. Shyam Divan, Senior Advocate, and Ms. Sugandha Yadav and Ms. Ria Singh Sawhney, Advocates, on directors’ duties and disclosure obligations regarding climate change.

The legal opinion finds that:

- 1** Directors must have regard to climate change-related risks in the course of discharging their duties under the Companies Act, 2013. Directors’ duties extend beyond shareholders to the community on matters concerning the environment, including climate change-related impacts.
- 2** Disclosures on material climate change risks and concerns are mandatory for public listed companies. In particular, the Securities and Exchange Board of India (SEBI) requires disclosure of information and risks relating to climate change from the top 1,000 listed entities (by market capitalization) as part of the Business Responsibility and Sustainability Report.
- 3** Directors are best advised to have in place a climate risk management policy, disclose climate change-related risks, assess and mitigate material risks, integrate climate change-related risks management in their business risk management strategy, and develop and execute plans to reduce carbon emissions and plans for more sustainable operations of the company.
- 4** Independent directors have elevated duties, and must keep themselves informed about the company and the external environment, which would include climate change-related risks to the company.
- 5** Companies and directors may face increased liability risk due to climate change. Companies may be exposed to climate change-related actions from three sources: (i) public interest litigation by environmental groups or activists; (ii) action before the National Green Tribunal; and (iii) action by the environmental regulator for breach of environmental law. Directors may be exposed to two types of actions: (i) prosecutions under environmental laws; and (ii) regulatory action by SEBI for breach of disclosure obligations. Companies and their directors could potentially face shareholders’ actions for mismanagement or class actions under the Companies Act, 2013.

Webinar on directors’ duties and climate change

An accompanying white paper on the duties of directors of Indian companies in respect of climate change by National University of Singapore Associate Professor Umakanth Varottil will be published shortly. The legal opinion and the white paper will be discussed at a free-to-attend webinar event on directors’ duties and climate change, co-hosted by the CCLI and the Society of Indian Law Firms on 4 October 2021 at 5:00pm IST.

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