

Press release

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Malaysian company directors warned of legal liability if they fail to consider climate issues

26 July 2022, London – Directors of Malaysian companies are legally required to incorporate climate change considerations into their decision-making processes, according to a [legal opinion](#) released on 26 July 2022. A failure to do so may be a breach of a director’s legal duties and could expose them to litigation from shareholders or enforcement action from the regulatory authorities.

Tan Sri Zarinah Anwar, the Chairman of Institute of Corporate Directors Malaysia and To' Puan Janet Looi, Senior Partner at law firm Skrine, conclude that directors of Malaysian companies “are duty bound to proactively and urgently apprise themselves of all aspects of climate change that can affect their companies, take action to manage the full spectrum of climate related risks by integrating them into their corporate strategies, plans and actions, and ensure proper disclosure of such risks.”

“On the other hand,” the authors opine, “directors who make climate-conscious decisions which may in the short term be less financially beneficial (such as investment in a lower emission asset with a longer-term profit horizon) could be protected by the business judgment rule as having acted in the best interest of the company.”

Boards cannot “deny their obligation to take into account climate change risks in discharging their fiduciary duty”, write Tan Sri Zarinah Anwar and To' Puan Janet Looi.

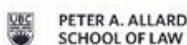
Datin Seri Sunita Rajakumar, the founder of the Climate Governance Malaysia, a peer network of non-executive directors focused on climate issues that was developed in collaboration with the World Economic Forum, said: “This legal opinion is an important contribution to directors' understanding of their duties, as long-term stewards of the organisation, to manage the top financial risks we are facing as well identifying opportunities which will lead to the sustainability of businesses. This legal opinion clearly articulates why it will be difficult for any director to claim they were not aware of the material risks arising from the climate crisis. We will not be able to reverse the climate crisis one lawsuit at a time, however, boards of directors owning their roles and responsibilities and stepping up to act is a critical contribution towards keeping our adaptations options maximised.”

Ellie Mulholland, the Executive Director of the Commonwealth Climate and Law Initiative, a legal research group that commissioned the opinion, said: “Malaysia is the latest jurisdiction where we have sought independent opinion about whether directors could be exposed to personal liability if they fail to properly govern and disclose climate issues. Like in Singapore, India and Hong Kong, the authors have found that directors could be personally liable if climate issues are not addressed in the boardroom. For those directors that are already proactively considering climate issues and want to set emissions reduction targets and climate-aligned business strategies, the opinion finds

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that the business judgment rule could protect directors as they navigate the disruption of the net zero transition.”

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The legal opinion is available [here](#).

About the individuals quoted

Tan Sri Zarinah Anwar is Chairman of the Institute of Corporate Directors Malaysia. She brings with her legal, corporate and regulatory experience from the many years spent in the corporate sector and public service. She is the former Chairman of the Securities Commission Malaysia (SC), assuming the helm after several years as its Deputy Chief Executive. At the SC, Tan Sri Zarinah served as Vice Chairman of the Emerging Markets Committee of the International Organisation of Securities Commissions and served two terms as Chairman of the ASEAN Capital Markets Forum.

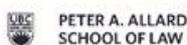
Tan Sri Zarinah started her career in the Malaysian Legal & Judicial service. She subsequently joined Shell Malaysia as legal adviser and rose to become Deputy Chairman and Head of Legal before leaving to join the SC. Tan Sri Zarinah is currently Chairman of the Board of Universiti Malaya, a member of the Board of Trustees of the Razak School of Government, Yayasan Hasanah, Amanah Warisan Negara, the Jeffrey Cheah Foundation and the Oxford Centre for Islamic Studies. She is also Pro-Chancellor of Universiti Teknologi MARA. She had served as non-executive Chairman of Malaysia Debt Ventures Berhad, a member of the Boards of PETRONAS and PNB, a member of the Academic Advisory Council of Universiti Teknologi PETRONAS and a member of the Advisory Board of the Emirates Securities and Commodities Authority.

To' Puan Janet Looi is the Senior Partner of Skrine and Head of the Corporate Division of Skrine, as well as Co-Head of the Firm's ESG Practice Group. She has been named as a distinguished practitioner and leading individual for her takeovers, mergers & acquisitions and cross borders transactions work by several leading publications such as Chambers Global, and Chambers Asia Pacific and Who's Who Legal, and by the International Who's Who of Business Lawyers in the area of Corporate Governance. She is also Head of Skrine's established Environmental Practice, which advises clients on climate change risks, all aspects of environmental compliance and directors' personal liability risks. The practice also advises on licensing requirements and investigations by the Department of Environment of Malaysia (DOE) and legal aspects of water supply and water resources management, including requirements under the Water Services Industry Act 2006 and the National Water Services Commission (SPAN)'s licensing regime. Janet was the Partner who negotiated the 15-year exclusivity agreement with the Government of Malaysia for the establishment of the first integrated scheduled waste treatment system in Peninsular Malaysia, and the Partner for the Government of Malaysia and Government of Denmark Integrated River Basin Management (IRBM) joint project, which culminated in the drafting of the Kedah Water Resources Enactment.

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Datin Seri Sunita Rajakumar is a professional independent director and a strong advocate of the importance of governance in general and risk management in particular. She founded Climate Governance Malaysia which is the country chapter of the World Economic Forum's Climate Governance Initiative, is a Fellow of the Institute of Corporate Directors Malaysia, promotes gender diversity on boards with the 30% Club, is a member of the Global Advisory Board of Nottingham University's School of Business and the Advisory Panel of the UN Global Compact Malaysia's Sustainability Center of Excellence, and is a workstream lead for government policy for the CEO Action Network, an industry led initiative to increase sustainability and climate resilience. She is Chair of Caring Pharmacy and independent director of Bursa-listed Dutch Lady Milk Industries, MCIS Insurance (a member of the Sanlam group) and Zurich General Insurance, as well as trustee of 5 charitable foundations.

About the CCLI

The CCLI is a legal research and stakeholder engagement initiative founded by the University of Oxford's Smith School of Enterprise and the Environment, ClientEarth and Accounting for Sustainability (A4S). We are a UK non-profit organisation funded by environmental philanthropy and research grants.

We examine the legal basis for directors and trustees to consider, manage, and report on climate change and broader environmental risks, opportunities and impacts, and the circumstances in which there may be liability for failing to do so. We also work to advance knowledge on effective sustainable governance practice.

We commission legal opinions from independent experts within a jurisdiction to build an authoritative evidence base on the requirements of company and trust law as it relates to the nature crises. We also work with leading academics, law firms and civil society entities to carry out our own legal research and disseminate our findings. Our Canadian partner, the Canada Climate Law Initiative, convenes 60 experts to educate Canadian boards on climate change under the Canadian Climate Governance Experts project. They also provide an online knowledge hub for climate risk and sustainable finance resources.

Find out more at www.commonwealthclimatelaw.org



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