



Press release

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New legal opinion cautions Indian company directors to take climate change seriously or risk personal liability

16 September 2021, London – Directors of Indian companies could face civil or penal liability for failing to consider climate change, warns a new legal opinion from Mr. Shyam Divan, a Senior Advocate who practices before the Supreme Court of India.

Indian law requires directors to act in the best interests of the environment, which includes the company's effects on climate change, the new legal analysis explains. If directors fail to do so, both the directors and their companies may potentially face claims by shareholders for mismanagement based on a breach of 'public interest'.

Directors may also face prosecution under environmental laws – which could lead to penal sanctions – for the company's failure to comply with statutory provisions or directions of the regulator relating to climate change.

The new legal analysis finds that Indian directors, and in particular independent directors, are obliged to keep themselves well-informed about the company and the external environment in which it operates, which would include financial risks to the company from the disruption from extreme weather events as well as policy, technological and market developments in the transition to decarbonise the economy to meet the goals of the Paris Agreement on climate change.

Commissioned by the Commonwealth Climate and Law Initiative (CCLI), the legal opinion, [Directors' obligations to consider climate change related risk in India](#) is authored by Mr. Shyam Divan, Senior Advocate, and Ms. Sugandha Yadav and Ms. Ria Singh Sawhney, Advocates.

"Directors would be best advised to integrate regular monitoring assessment and mitigation of climate change-related risks to the company, towards fulfilling their duties to shareholders and the wider community", said Mr. Shyam Divan, Senior Advocate, lead author of the opinion.

Dr. Lalit Bhasin, President of the Society of Indian Law Firms (SILF), said "It is my view that legal compliance in respect of environmental laws is not sufficient. Something more is required to be done and accomplished by the corporate sector to protect the environment and to decarbonise the economy to meet the goals of the Paris Agreement on climate change. There is a heavy responsibility on boards of corporate entities to ensure not only compliance with the law but also to take other and further steps to ensure that present and future generations can breathe fresh air and not live in a polluted environment. There is a stringent duty and obligation cast on the legal profession to help and promote a healthy environment and sustainable development."

Mr. Umakanth Varottil, Associate Professor, National University of Singapore (NUS), and expert on corporate law in India said: "We now understand that climate change poses material financial risks, and more, to Indian corporations. The Divan legal opinion finds that directors must examine these risks and balance the long term sustainable value of the company with other interests. Compared with some other jurisdictions, Indian directors have even more



onerous obligations on climate change. This is because the environment is part of directors' duties under Indian company law, so mitigating climate change must be treated as an end in itself by Indian directors."

"The Divan legal opinion adds a strong voice to a growing body of legal opinions across the globe. From Australia to Canada, Singapore and now India, independent legal experts are warning company directors that they face reputational consequences, litigation or even personal liability if they fail to consider climate change when in the boardroom." said Ms. Ellie Mulholland, Director of the CCLI.

Following the publication of the legal opinion, these issues will be discussed at a free webinar 'Directors' duties and climate change in India' from 5:00PM to 6:30PM IST on 4th October 2021, co-hosted by the CCLI and the Society of Indian Law Firms (SILF).

Speakers will include Dr. Lalit Bhasin (President of the SILF), Mr. Cyril Shroff (Managing Partner, Cyril Amarchand Mangaldas) and Mr. Umakanth Varottil (Associate Professor, NUS). For more information, click [here](#).

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About the individuals quoted

Mr. Shyam Divan is a Senior Advocate who practices before the Supreme Court of India. His areas of practice cover most branches of civil litigation including banking, securities law, arbitration, administrative law and environmental law. He appears for citizens' groups in environmental cases and assisted the Supreme Court as *amicus curiae* in the Bellary case involving illegal iron ore mining in the forests of Karnataka. Mr. Divan is the co-author of Environmental Law and Policy in India (2nd Edition, 2001, Oxford) and has authored a chapter on Public Interest Litigation in Oxford Handbook of the Indian Constitution (2016, Oxford). He has taught environmental law at the graduate and postgraduate levels at the University of Mumbai and has lectured on the subject at the National Law School of India University, Bangalore. Mr. Divan was elected Vice President of LAWASIA, the Law Association for Asia and the Pacific, in 2018.

Dr. Lalit Bhasin started his law practice in 1962 and has developed Bhasin & Co. as one of the largest law Firms in North India. His areas of specialisation include Employment & Labour Laws, Corporate Law (Formation of Joint Venture Companies, Foreign Collaborations, Amalgamations, Mergers, Acquisitions, Disinvestment); Laws relating to Information Technology; Contract and Conveyancing; Constitutional Law; Banking and Finance; Consumer Protection Laws; Disputes relating to Foreign Investment e.g. Shareholders Agreements, Collaboration Agreements, Agency and Distribution Agreements, Technology Transfer Agreements and Dispute Resolution Practice. He was awarded the Plaque of Honour by the Prime Minister of India in 2002 for outstanding contribution to the Rule of Law. He was awarded Doctor of Laws (LL. D.) Honoris Causa by Jaipur University in 2013 and he has recently been conferred the Degree of Doctor of Laws (LL.D) Honoris Causa by University of Rajasthan.

Mr. Umakanth Varottil is an Associate Professor at the Faculty of Law, National University of Singapore. He specialises in corporate law and governance, mergers and acquisitions and corporate finance. While his work is generally comparative in nature, his specific focus is on India and Singapore. He has co-authored or co-edited five books, published articles in international journals and founded the IndiaCorpLaw Blog. He has also taught on a visiting basis at law schools in Australia, India, Italy, New Zealand and the United States.



About the CCLI

The CCLI is a legal research and stakeholder engagement initiative founded by Oxford University Smith School of Enterprise and the Environment, ClientEarth and Accounting for Sustainability (A4S). The CCLI examines the legal basis for directors and trustees to manage and report on climate change-related risk and climate mitigation and our research is at the forefront of the intersection of climate and biodiversity risks under existing companies and securities laws. It provides practical tools on how to integrate the risks and opportunities of climate change into corporate governance, to minimise the risk of personal liability and maximise efforts of the private sector in the transition to a sustainable economy. The CCLI convenes conferences and stakeholder events to disseminate these messages and build capacity across the corporate, regulator and civil society ecosystem. The CCLI does not litigate, but aims to demonstrate that prevailing company laws and fiduciary duties compel action on climate change.

Founded to focus on four Commonwealth countries: Australia, Canada, South Africa, and the United Kingdom, the CCLI has expanded its remit to the United States, Singapore, India, Hong Kong, Japan and Malaysia. The CCLI leverages the inter-disciplinary and cross-jurisdictional perspectives provided by its global experts from academia and the legal, accountancy, business, and scientific communities.

For more information, visit: www.commonwealthclimatelaw.org

About The Society of Indian Law Firms (SILF)

The Society of Indian Law Firms, or SILF, is a collective of India's Top Corporate Law Firms and the only representative body for law firms in India to date. SILF believes in working for the interests of the legal community in general and law firms in particular. It has been actively working towards achieving its goals with the help of all its member firms, numbering more than 100. SILF strives to create an atmosphere that will enable Indian law firms to match the technology, manpower, skill and infrastructure that most of the foreign law firms possess. It also serves as a forum for exchange of ideas and information, and also as a medium for interaction with the government, the judiciary and the bureaucracy.

Since its inception, SILF has amassed a wealth of experience and knowledge capital, as well as fostered a level of unity and solidarity between competing law firms which would be difficult for any other entity to match. SILF continues to expand its horizons and work vigorously in order to fulfil its mission – “protecting, safeguarding and promoting the interests of law firms in India.” SILF also has a Memorandum of Understanding with Queensland Law Society and sustaining memberships with the International Bar Association (IBA), Union Internationale des Avocats (UIA), LAWASIA and Inter-Pacific Bar Association (IPBA).

For more information, visit: <http://www.silf.org.in/>

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