

FOR IMMEDIATE RELEASE**As climate crisis reshapes business, board directors must rethink legal duties*****New Legal Primer examines 20 jurisdictions and European Union***

24 June 2021, London – A new legal Primer produced jointly by the Commonwealth Climate and Law Initiative and the Climate Governance Initiative (CGI), examines the fast-changing landscape of climate risks and opportunities for business, and the implications for board directors' legal obligations. The *Primer on Climate Change: Directors' Duties and Disclosure Obligations*, which examines 20 countries and the European Union, is the first-ever legal primer that takes a cross-jurisdictional view across such a broad sample of major civil law and common law systems. The Primer shines a spotlight on a set of core universal principles, as well as notable variations in breadth and stringency between the leading jurisdictions and the broader group.

This Primer follows the publications of expert legal opinions by independent counsel on climate change and directors' duties, the earliest of which was in 2016 in Australia ([Hutley Opinion](#), subsequently updated in 2019 and 2021), followed by Canada in 2020 ([Hansell Opinion](#)) and Singapore in April 2021 ([Chan Opinion](#)). As these opinions began to gain prominence in specialist legal circles and spark further such initiatives in other common law countries, the CGI reasoned that board directors needed to be in a position to understand and act on their findings.

Karina Litvack, non-executive director and Chairman of the Climate Governance Initiative, and one of the contributors to the Primer, said:

'Making this information accessible to board directors, most of whom are not legally trained, is vital to enable a shift in understanding and culture. Many directors labour under the misapprehension that their legal obligations may in fact preclude them from pursuing Paris-aligned climate policies, particularly if this means "leaving profitable business on the table". The Primer shows that this is simply not the case – in fact, quite the opposite.'

Ellie Mulholland, Director of the Commonwealth Climate and Law Initiative and one of the contributors to the Primer, said:

'The Primer is a layperson's guide to the expert opinions and analysis from legal counsel, leading law firms and academics on what climate change and the net-zero transition means for directors' duties. It is a succinct, highly readable summary of the key principles and takeaways that board directors must know and act upon today.'

The geographic scope of the Primer covers virtually all countries where the CGI has either well-established or prospective chapters. It covers ten civil law countries plus the EU: Brazil, Chile, France, Germany, Italy, Japan, Mexico, Russia, Switzerland, and Ukraine, along with ten common law jurisdictions: Australia, Canada, Hong Kong, India, Malaysia, New Zealand, Singapore, South Africa, U.K., and the U.S.

This Primer is being launched at webinars for Latin America (in Portuguese and Spanish), North America, EMEA and Asia-Pacific. Each of these webinars comprises a panel of legal, director and investor experts who will share insights on the legal risks and duties associated with climate change that board directors must understand and act upon in order to steer their companies to resilience and commercial success in a zero-carbon world.

Key Findings

- Climate change is now widely recognised as posing not only a material risk to business, but a major threat to the stability of the global financial system.
- This fact alone, when overlaid against the traditional duty of loyalty and duty of care and diligence that have long underpinned director duties across all jurisdictions, means that directors must look at their legal duties through a fresh climate lens.
- Contrary to what many directors have long assumed, their legal duties to protect the interests of the corporation should not be seen as a barrier to taking action on the climate crisis, even if this may involve “leaving profitable business on the table”; on the contrary, their duties require them to be properly informed about climate change risks, and to make decisions accordingly.
- Conversely, failure to incorporate climate risks cannot be excused by reference to such concepts as the business judgement rule (or its equivalent in various jurisdictions): no director, if challenged in court, will reasonably be able to argue that “nobody knew” how serious the climate threat was, or that they were not grossly negligent in failing to be informed of these risks. The standard will be that directors “knew or should have known”.
- Another key finding of the Primer is that rising standards of climate disclosure, whether enshrined in law or voluntary through such widely-recognised frameworks at the Task force on Climate-related Financial Disclosure, also have major implications for how director should understand their duties. Mere compliance with disclosure rules will not suffice if not accompanied by change in practices, because fulfilment of their duties will be judged against a standard of care that is defined in terms of what a “responsible director” would *do*, rather than report, to safeguard his or her company over the long term.
- This standard of care is influenced by a wide array of factors, including scientific advice and rising investor expectations regarding climate stewardship
- The incidence of climate-related litigation has been rising rapidly, testing the boundaries of what had long been acceptable business practice. Wise directors will not wait to be challenged in court - they will understand that proper fulfilment of their duties means demonstrating the robustness of their actions and governance processes.
- Finally, although some jurisdictions are clearly in the lead, the Primer finds that these principles are broadly established in all 20 jurisdictions it examined, plus the EU, and that laws, regulations and the interpretation they are being given are moving in one consistent direction.
- Remarkably, examples of leading-edge laws, guidance and standards were found not only in the European Union, New Zealand and the UK - where the public consensus on climate change is well established - but also in Australia and Canada, where the climate question remains far from settled in both public discourse and director circles.

About the Commonwealth Climate and Law Initiative

The Commonwealth Climate and Law Initiative 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 Commonwealth Climate and Law Initiative 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. We also provide 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. Founded to focus on four Commonwealth countries: Australia, Canada, South Africa, and the United Kingdom, the Commonwealth Climate and Law Initiative has expanded its remit to the United States, Singapore, India, Hong Kong, Japan and Malaysia. For more information, visit: www.ccli.ouce.ox.ac.uk/

About Canada Climate Law Initiative

The Canada Climate Law Initiative is the Canadian partner of the Commonwealth Climate Law Initiative. The Canada Climate Law Initiative is an inter-disciplinary research initiative that advances the understanding of climate governance across Canada through research, dialogue and knowledge sharing. CCLI conducts rigorous legal analysis and consult with a national network of 66 Canadian Climate Governance Experts to bring up-to-date governance knowledge and tools to corporate and pension boards across Canada. CCLI is led by three principal investigators, Dr. Janis Sarra and Dr. Carol Liao from the Peter A. Allard School of Law, University of British Columbia, and Professor Cynthia Williams from the Osgoode Hall Law School, York University. For further information: www.ccli.ubc.ca/

CCLI acknowledges that the UBC Point Grey campus is situated on the traditional, ancestral and unceded territory of the x^wməθk^wəy'em (Musqueam).

About the Climate Governance Initiative

In 2019, the World Economic Forum unveiled the [Principles for Effective Climate Governance](#), a comprehensive set of guidance principles that lay out best practice for boards and their directors in respect of the climate, and partnered with the Climate Governance Initiative (CGI) to facilitate their promotion and implementation. To this end, local CGI “Chapters” have been set up around the world to serve as a centre of expertise and a venue for directors to exchange with each other as well as with a wide range of subject matter experts, and access a range of specialist guidance materials and tools. This Primer addresses Principle One of the WEF Principles, which sets out the role and responsibilities of the board.

The Climate Governance Initiative currently has 14 active Chapters in Brazil, Brussels, Canada, Chile, France, Germany, Italy, Malaysia, the Nordic region, Poland, Russia, Switzerland, the United Kingdom, and the United States. Additional Chapters in Australasia, Europe, Africa and Latin America are currently in formation, bringing the total to some 25 national and regional members by the end of 2021.



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