

Press release

**FOR IMMEDIATE RELEASE**

**New legal opinion cautions Hong Kong company directors to take climate change seriously or risk personal liability**

**1 November 2021, London** – Directors of Hong Kong-incorporated companies are obliged to take climate risk into account in the discharge of their obligations to the company or face the potential for personal liability, warns a new legal opinion.

Commissioned by the Commonwealth Climate and Law Initiative (CCLI), the legal opinion, '[Directors' Duties and Disclosure Obligations under Hong Kong Law in the Context of Climate Change Risks and Considerations](#)' is authored by Mr Alex Stock SC and Ms Jennifer Fan at Temple Chambers.

As diplomats, scientists, lobbyists, activists, artists, the media, politicians, high-level executives and NGOs gather in Glasgow for COP26, the importance of climate change for businesses worldwide is clearly apparent, and it is increasingly clear that climate change is something Hong Kong directors should be considering in their roles as board directors.

Regulatory authorities, including the Hong Kong Monetary Authority (HKMA), have taken detailed and specific steps to bring climate change risks to the attention of banks and insurers and listed companies. Climate change has been placed at the forefront of Environmental, Social and Governance (ESG) considerations, and there is an increasing focus on the need for board level consideration of and responsibility for such matters.

The new legal analysis finds that Hong Kong directors of listed companies would find it very difficult to claim that they were unaware of various forms of climate change risks to their companies' businesses, where those risks have been repeatedly drawn to their attention including during the ESG-disclosure process. Mr Stock and Ms Fan conclude, "There is at least the potential for directors to be held liable to the company for breach of such duties which result in losses to the company."

Mr Stock SC and Ms Fan recommend that boards of directors, whether listed or not, conduct thorough analyses of the risks and opportunities faced by their company in relation to climate change. Directors need to take active and genuine steps to address climate change risks which are material to their company's interests.

Professor Ernest Lim from the National University of Singapore, author of *Sustainability and Corporate Mechanisms in Asia* (Cambridge, 2020) and co-author of the 'Legal Opinion on Directors' Responsibilities and Climate Change under Singapore Law' said: "Climate-related risks have material and adverse financial consequences for companies and their shareholders, which will in turn impact on stakeholders' interests. The Hong Kong legal opinion convincingly demonstrates that directors of companies in Hong Kong are, and should be, legally required to take into account climate-risks in their decision-making process, failing which they may be liable for violating their duties to act in good faith in the company's best interests and to exercise reasonable care, skill and diligence."

The CCLI's Director Ms Ellie Mulholland, explained: "In Singapore and Australia, financial regulators have referred to equivalent legal opinions in these jurisdictions when taking regulatory actions to address climate change as a financial risk issue. The regulatory environment in Hong Kong for climate risks is fast developing. Hong Kong directors and their lawyers would be well advised to read the Stock opinion and take steps today to fulfil their duties to their company in light of climate change and the transition to net zero."

Following the publication of the legal opinion, these issues will be discussed at a free webinar 'Directors' duties and disclosure obligations under Hong Kong law regarding climate change'



co-hosted by the CCLI and the Asian Institute of International Financial Law (AIIFL) in December 2021.

Speakers include Ms Christine Lau (Assistant Vice President, Listing Department, Hong Kong Exchanges and Clearing Ltd), Ms Alex Bidlake (Corporate Partner, Linklaters), Dr. Emily Lee (Director of AIIFL and Associate Professor of Law at the University of Hong Kong), Professor Ernest Lim (Faculty of Law, National University of Singapore and AIIFL academic advisory board member), and Ms Sarah Barker (Partner, MinterEllison).

For more details of the webinar and to register, please click [here](#).

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### **About the individuals quoted**

**Professor Ernest Lim** is from the Faculty of Law, National University of Singapore (NUS). He obtained his D.Phil. and B.C.L. from the University of Oxford, LL.M. from Harvard Law School and LL.B. from NUS. Prior to joining NUS, he taught the law of business associations, contract law and commercial law at the Faculty of Law, the University of Hong Kong (HKU) for six years. He serves on the academic advisory board of the Asian Institute of International Financial Law at HKU. Prior to joining academia, he worked in the New York and Hong Kong offices of Davis Polk & Wardwell where he specialised in global capital market transactions. He is admitted to the New York State Bar and Singapore Bar, qualified as a solicitor in England and Wales, and was a registered foreign lawyer in Hong Kong.

**Ms Alex Bidlake** is a Partner at Linklaters Hong Kong. She has extensive experience advising corporates, financial sponsors and financial institutions on a range of public and private M&A transactions, joint ventures, private equity deals, primary and secondary equity issues (including IPOs, rights issues and placings) as well as general corporate and regulatory advisory matters. Ms Bidlake led the Linklaters team that published a report, in collaboration with the 30% Club Hong Kong, looking at nomination and diversity on Hong Kong boards.

**Ms Ellie Mulholland** is the London-based Director of the non-profit Commonwealth Climate and Law Initiative and a Senior Associate in the climate risk governance team of commercial law firm MinterEllison. Ellie sits on the steering committee of The Chancery Lane Project, a pro bono collaboration among the legal profession to re-wire contracts and laws to tackle climate change. She is also on the management team of the Oxford University Sustainable Law Programme and a member of the Technical Working Group for the Climate Disclosure Standards Board.

### **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](http://www.commonwealthclimatelaw.org)



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