

Press release

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New legal opinion cautions Philippine company directors to take climate change seriously or risk liability for gross negligence

28 November 2022, London – Directors of Philippine for-profit corporations must take into consideration climate change-related risks in the discharge of their fiduciary duties of obedience and diligence to fulfil their companies' long-term legal, economic, moral and social obligations towards their shareholders and other stakeholders. Directors must do so in order to abide by the "rules of good corporate governance" as required by the Revised Corporation Code.

Commissioned by the Commonwealth Climate and Law Initiative (CCLI), the [legal opinion](#), 'Directors' Duties & Responsibilities and Disclosure Obligations Under Philippine Law On Climate Change Risks' is authored by Cesar L. Villanueva (Senior Founding Partner, Villanueva Gabionza & Dy), Lily K. Gruba (Senior Partner, Zambrano Gruba Caganda & Advincula), Angelo Patrick F. Advincula (Senior Partner, Zambrano Gruba Caganda & Advincula) and Joyce Anne C. Wong.

The opinion finds that under Philippine Corporation Law, the risks arising from climate change are – as with other foreseeable financial risks – within the scope of directors' duties to act in the best interest of the corporation and its shareholders. Additionally, directors owe their duties to stakeholders more broadly, and hold a stewardship role to ensure that company operations do not degrade the environment or contravene environmental laws.

Where directors are grossly negligent or act in bad faith in directing the affairs of the corporation, they can be held personally liable. Formally approving actions which lead to the corporation violating an environmental law may constitute acting in such a manner, and expose directors to liability.

Directors of companies vested with public interest, such as publicly-held companies, banks and other financial intermediaries, owe a fiduciary duty of extraordinary care to stakeholders other than shareholders. In light of the Philippine government's recognitions that climate change poses serious risks both nationally and globally, the authors opine that this duty would mean that directors would be hard-pressed to use the exercise of business judgment as a legal defence when the stakeholders are able to prove the effects of the companies' operations towards the degradation of the environment.

Regulatory authorities, including the Philippine Securities and Exchange Commission (SEC), have taken detailed and specific steps to bring climate change risks to the attention of banks and insurers and listed companies. For example, the Sustainability Reporting Guidelines for Publicly-Listed Companies provide a Sustainability Reporting Framework to which Philippine publicly-listed companies must adhere on a 'comply or explain' basis.

The new legal analysis finds that if sustainability reporting is made fully mandatory by the Philippine SEC (as is predicted for 2023), the failure to comply with the reporting rules may demonstrate gross negligence or bad faith in directing the affairs of the corporation in relation to climate change risks that the company may face, or regarding the company's obligation to refrain from harming the environment. Boards of directors of both private and public companies should therefore prepare for increased reporting standards and corresponding changes in their identification and management of climate-related risks, as well as employ value chain processes that take ESG issues into consideration.



Carlos Gatmaitan, Chief Executive Officer of the Institute of Corporate Directors, Philippines, declared: “With climate change being at the forefront of the COP27 in Egypt last month, it is inevitable to continue to be deeply embedded in sustainability reports for the long term. It is essential therefore that the framework for climate change as part of Sustainability Reports be reviewed towards a global standard. This publication is a major step for formalizing an SEC Memorandum Circular for proper duties and responsibilities of directors as well as disclosures and obligations of [publicly-listed companies] PLCs.”

Alex Cooper, Lawyer at the CCLI said: “This independent opinion of Philippine counsel adds to and complements opinions which we have commissioned in Malaysia, India, Hong Kong and Singapore. It finds that governance of foreseeable financial climate change risks forms part of directors' duties, and that directors have a stewardship role to ensure that company operations do not degrade the environment. The opinion finds that directors may be held liable for gross negligence in performing their duties, but generally are able to take actions to mitigate the impacts of climate change on their company without exposing themselves to the risk of liability due to the business judgment rule.”

Joyce Melcar Tan, senior lawyer at environmental law NGO ClientEarth, observed: “The legal opinion provides a unique opportunity to drive crucial conversations regarding the role of the private sector, particularly company directors, in tackling the climate crisis. It is essential reading for lawyers and company directors on the legal framework for managing climate risks and pursuing opportunities as the Philippines transitions to a net zero carbon economy. We believe this will lead to more companies in the Philippines establishing, and fulfilling, net zero transition plans within a Paris-compatible timeframe.”

To read the legal opinion click [here](#).

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About the individual quoted

Dr. Carlos Gatmaitan, Chief Executive Officer of the Institute of Corporate Directors, Philippines is the CEO and a Teaching Fellow of the Institute of Corporate Directors (ICD). He concurrently serves as Professor of Strategy Management at the Ateneo Graduate School of Business (AGSB) and specialises in Strategic Management, Corporate Governance, Risk Management and Sustainability Reporting. Dr. Gatmaitan is an active Independent Director and is Chairman of Governance and Audit Committees for Life Savings Bank, Solar Philippines New Energy Corporation (PSE), Vismotors Corporation and Global Power Solutions, Inc. (GPS). Prior to this, he was the Chairman of MRC Allied, Inc., a publicly-listed company at the Philippine Stock Exchange involved in renewable energy, mining and property development. He was also appointed by President Benigno Aquino, Jr. as President and CEO of PNOG Renewables Corporation, a Government-Owned and Controlled Corporation mandated to develop renewable energy in the Philippines. During his term, he was a Director of the National Renewable Energy Board (NREB) and led joint venture agreements involving major renewable energy projects.

Alex Cooper, Lawyer – Corporate/Finance and Climate Change is a lawyer focusing on corporate and financial matters at the Commonwealth Climate and Law Initiative.

Alex has worked in collaboration with lawyers across South-East Asia to advance the legal analysis of climate change and directors' duties across a number of jurisdictions, including India, Hong Kong, Malaysia and the Philippines. He has co-authored the CCLI's legal analysis *Fiduciary Duties and Climate Change* in the United States and worked with the Climate Governance Initiative on the production of the global primer on directors' duties and climate change. He is a UK-qualified lawyer, with significant experience in the dispute resolution department at a magic circle law firm, where he assisted clients



in litigation before the High Court and Court of Appeal and in regulatory investigations. He also acts as a legal consultant on biodiversity issues with a number of civil society entities.

Joyce Melcar Tan, Senior Lawyer – Asia Climate and Energy Programme, is a lawyer at the environmental law NGO ClientEarth, focusing on the Philippines' transition to a climate-neutral economy and enhancing capacity for climate and environmental law practice to facilitate this transition.

Joyce works with civil society, the academe, and other stakeholders to strengthen climate action to achieve the goals of the Paris Agreement. She is a Philippine and New York-qualified lawyer with extensive experience in climate and energy policy. She was previously an associate at SyCip Salazar Hernandez & Gatmaitan, where her practice included energy and environmental regulation.

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, Malaysia and the Philippines. 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

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