Guide on Climate Action for Boards in Southeast Asia

About ClientEarth

ClientEarth is a non-profit organisation that uses the law to create systemic change that protects the Earth for – and with – its inhabitants. We are tackling climate change, protecting nature and stopping pollution, with partners and citizens around the globe. In Asia, we work with the private sector, civil society and government regulators to support the net zero transition through capacity building and legal analysis on topical issues including climate change, sustainability and the environment. From our offices in Europe, Asia and the USA we help build a future for our planet in which people and nature can thrive together.

About Earth On Board

Earth on Board is an ecosystem of sustainability actors dedicated to helping organisations achieve an Earth Competent Board: Where board members are proficient in sustainability, with the right governance, asking management the right questions.

About Climate Governance Malaysia

Climate Governance Malaysia (CGM) is the national chapter for the World Economic Forum's Climate Governance Initiative. Since its launch in May 2019 by YB Yeo Bee Yin and HE Nick Bridge, CGM has organised over 100 events, bridging gaps between established science, regulatory expectations, and corporate understanding. CGM operates under the Institute of Corporate Directors Malaysia and is supported by Bank Negara, FIDE FORUM, Securities Commission, Bursa Malaysia, and JC3. It collaborates regularly with the Malaysian Institute of Corporate Governance, Institutional Investors Council of Malaysia, Minority Shareholder Watch Group, CEO Action Network and the Asian Corporate Governance Association, and continues to lead discussions and actions on climate governance in Malaysia and beyond.

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FOREWORD

The urgency for corporate directors in Southeast Asia to act swiftly in response to climate change cannot be overstated. With the region's economy growing at an average of 5% annually and heavily reliant on fossil fuels, the potential for greenhouse gas emissions to surge dramatically by 2050 poses a significant challenge. As stewards of their organisations, directors hold a pivotal role in integrating climate considerations in their decision-making processes. This guide serves as a crucial resource for navigating the complexities of evolving climate-related frameworks and standards, empowering directors to lead their companies toward sustainable practices while safeguarding their business interests.

Corporate directors need to address climate change as a significant risk, as it poses clear financial, legal and environmental concerns. Governments across the region are implementing policies aimed at transitioning to a zero-carbon economy. Legal risks associated with climate change are becoming increasingly pronounced, with growing litigation against corporates and board directors for failing to address foreseeable climate impacts and financial losses due to mismanagement.

This Guide highlights various forms of legal risks such as climate litigation, including cases of greenwashing, corporate liability for climate harm, and inadequate adaptation measures, with notable examples throughout the globe. It underscores that companies must not only comply with environmental regulations but also anticipate legal risks associated with their climate impact. Failure to do so may result in personal liability for directors, and legal liability and reputational damage for the corporations involved. The Guide also covers emerging legal and financial trends related to climate change, such as the growing importance of transition plans for effective decarbonisation, climate transition finance and the impacts of the EU's Carbon Border Adjustment Mechanism and Corporate Sustainability Due Diligence Directive.

This publication helpfully bridges a gap as there has been little guidance published for directors of corporations incorporated in Southeast Asian nations. This Guide builds on recent publications such as the Climate Governance Initiative's and CCLI's 'Directors' Duties Navigator: Climate Risk and Sustainability Disclosures', and incorporates practical insights from industry stakeholders, making it an invaluable tool for directors in the region seeking to enhance their understanding of climate-related developments.

As Southeast Asia faces unprecedented environmental challenges, this Guide is not just timely but essential for fostering resilience and promoting robust climate leadership by boards to ensure a sustainable future.

Karina A. Litvack
Ambassador and Founding Chairman of the Climate Governance Initiative

1. EXECUTIVE SUMMARY

Southeast Asia's particular vulnerability to climate change – both its physical impacts and transition risks in the form of policy, market, and technological shifts – makes it imperative for corporate boards to integrate climate considerations into their decision-making. As stewards of their organisations, corporate directors hold significant influence in shaping not only the resilience of their businesses, but also the broader trajectory of sustainable development in the region. How well they do so will impact both their companies' futures and those of the communities they serve.

Over the past several years, there has also been a notable increase in the quantity and complexity of climate-related frameworks and standards at all levels – national, regional, and international. Directors are now faced with navigating this increasingly complex terrain. Understanding how evolving developments, regulations and standards are meant to achieve net-zero goals, and the legal risks associated with this changing landscape, can be challenging.

This publication seeks to provide guidance for directors to consider when facing these challenges. It sets out the landscape for evolving climate-related developments in Southeast Asia and associated legal risks, and includes practical insights as gleaned from "off-the-record" interviews with stakeholders and business executives in Southeast Asia. It is meant as an introductory guide, and not as legal advice – each company's board will have to take into account that company's unique attributes, circumstances and associated regulatory regime when making climate-related business decisions.

The Guide begins by providing a brief overview of the state of play of the net zero transition in Southeast Asia and how this is driving shifts in regulation and the market. It covers developments in the legal duties and risks that corporations and boards of directors in Southeast Asia can be exposed to. ESG disputes have been identified as a significant litigation risk. The Guide identifies these risks in the form of greenwashing lawsuits, lawsuits for climate-related harm, liability for financing climate-damaging activities, commercial disputes over contractual breaches, regulatory enforcement, and fiduciary duty obligations. Directors are increasingly required to integrate climate risks into corporate governance, with fiduciary duties and duties of competence requiring proactive climate action to avoid personal and corporate liability.

Boards can also demonstrate corporate leadership in the net zero transition through climate disclosures. As investors, regulators, and stakeholders demand transparency on climate risks, international standards for reporting from the Task Force on Climate-Related Financial Disclosures (TCFD) and the International Sustainability Standards Board (ISSB) are increasingly being adopted in Southeast Asia. Additionally, foreign laws like the EU's Corporate Sustainability Reporting Directive (CSRD) are likely to impact companies in Southeast Asia, requiring them to adhere to comprehensive reporting standards to remain compliant internationally. Reporting also comes hand-in-hand with the formulation of a transition plan for effective decarbonisation. A detailed short, medium, and long-term plan which can be regularly reviewed to incorporate evolving climate science, technology and regulations will be instrumental for companies in Southeast Asia to achieve net zero goals.

Another aspect of climate leadership can be demonstrated through engagement with shareholders. There is growing interest in climate-related shareholder resolutions in Asia, particularly in Japan. It is also important to note the unique dominance of family-owned firms in the region, some of which demonstrate leadership in sustainability due to strong internal motivations and generational thinking.

The Guide also provides a brief overview of developing areas that boards should continue to keep abreast of, such as the impact of the EU Directive on Corporate Sustainability Due Diligence and the financial instruments and products that have been devised to finance the climate transition.

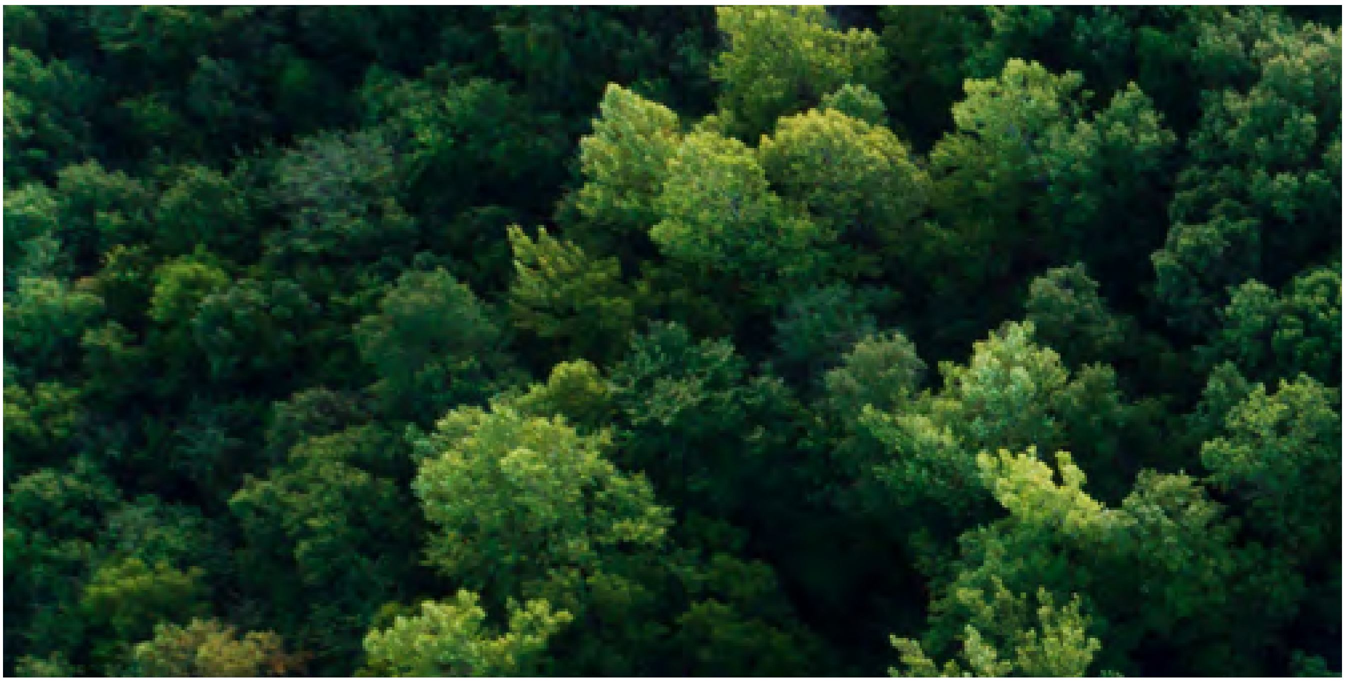
The final section of the Guide concludes with practical suggestions on integrating climate considerations into the boardroom, by drawing on insights from off-the-record interviews with board directors and other stakeholders in the region as well as the extensive experience of Earth on Board and Climate Governance Malaysia in supporting boards on corporate-climate governance. This section discusses how Boards can be structured to provide robust climate oversight, as well as specific steps that the Board can take, including

- Embedding sustainability into all board committees, and ensuring discrete sustainability governance structures, usually with a stand-alone sustainability committee. Further, such a stand-alone sustainability committee must be engaged with and work closely with other committees fundamental to the running of the company.
- Assessing climate risks and opportunities that are most pertinent to the company, setting the company's climate ambition and devising a transition plan to deliver it, and subjecting this plan to continuing science-based validation processes. This would include setting an internal carbon price and projecting the cost of natural capital or services into the future to evaluate the company's portfolio of research and development projects in view of encroaching planetary boundaries.
- Ensuring alignment within the company and its value chain. For instance, the selection process of a new supplier should go beyond basic metrics such as price, quality, and delivery time, and also include consideration of the supplier's resilience to climate change.

Given the unique circumstances of each corporation's industry and jurisdiction, the examples of corporate sustainability strategies contained in this section are meant for informational purposes only, and are not an endorsement of a particular strategy or company.[1] Rather, it is hoped that directors reading this Guide will draw insights from the examples and practical suggestions as they consider the corporate sustainability strategies and transition plans that are appropriate for their own companies.

Read together as a whole, the Guide is intended to set out climate-related developments and associated legal risks relevant to boards in Southeast Asia, along with suggested ways in which boards can respond to those risks. It would be prudent for boards to ensure good corporate-climate governance – both as a matter of compliance with legal requirements in relevant reporting obligations and sustainability frameworks, and in order to minimise the legal risks that corporations and boards could be exposed to. For instance, the legal obligation for directors to manage climate-related risks by integrating them into corporate strategies could reasonably require the setting of science-based climate goals and a transition plan. Furthermore, to the extent that a corporation is liable in a validly brought climate lawsuit, directors may also face personal liability for failing to act reasonably in steering the corporation to avoid such legal risks.

Finally, in view of the exigencies of the planetary crises, robust leadership by the board is needed to ensure that the corporation remains not only resilient, competitive, and accountable to the community within which it operates, but also that it capitalises on opportunities to succeed and thrive in an increasingly disrupted world.



2. INTRODUCTION

Southeast Asia is home to over 685 million people, constituting around 8.5% of the world's population.[2] With a combined GDP of US$3.6 trillion (2022), it is the fifth largest economy in the world.[3] Southeast Asia's economy continues to grow at an average of 5% a year, creating demand for energy to power its people, cities, and industries. Currently, 75% of the energy supply is from fossil fuels.[4] Without new policies to address this, the region's greenhouse gas (GHG) emissions could increase 3.7 times by 2050 as compared to 2020.[5] Southeast Asia is projected to be responsible for 6.5% of CO_2 emissions by 2040, compared to 4.1% in 2019.[6]

Concerningly, Southeast Asia is one of the regions most vulnerable to the impacts of climate change. The region is threatened by rising sea levels, increased heat waves, strengthened monsoons, extreme floods and droughts, and unprecedented weather events.[7] These hazards are not solely physical. They are a threat to human life, livelihoods,[8] and the fabric of society. According to a middle-of-the-road scenario in which the world warms 2°C by 2050, the entire region of Asia could lose 14.9% of its GDP by that date, with consequential impacts on human livelihoods. It is expected that Indonesia, Malaysia, the Philippines, Singapore and Thailand could lose seven times their total economic output between 2021 and 2050 if ambitious climate action is not taken.

With latest studies suggesting that global warming will exceed 1.5°C this decade and 2°C before 2050, these impacts could be felt much sooner.[9] Indeed, the region is already experiencing significant impacts with extreme weather events growing in intensity and magnitude.[10] In addition to the loss of human lives, these events have hurt developing economies in the region. According to the ASEAN State of Climate Change Report, the estimated economic loss to the region from natural hazards between 2009 and 2020 was US$97.3 billion.[11]

The silver lining is that the financial opportunities of robust climate action are enormous. To keep the goal of staying within 1.5°C of warming alive, we need an estimated investment of US$210 billion a year up until 2050 into renewables, energy efficiency, enabling technologies and infrastructure.[12] If net-zero emissions are achieved by 2050, this could lift the Asia-Pacific's GDP by as much as 6.3% above predicted levels and create up to 36.5 million additional jobs by the 2030s.[13] With its rich biodiversity, Southeast Asia is particularly well placed to yield large benefits from protecting nature – investing in appropriate measures could lead to US$2.19 trillion in economic and environmental returns *annually*.[14] The preservation of not only our livelihoods but the continued prosperity and development in Southeast Asia depends critically on swift and extensive climate action being taken today.

A. BOARDS DRIVE CLIMATE ACTION

Boards in Southeast Asia have a critical role in navigating corporations through the planetary crisis of climate change. They are uniquely placed to ensure that the corporations that they helm are well-positioned to

demonstrate climate leadership and catalyse transformative change. Boards must ensure that corporations' business models are in alignment with a net zero transition. A commitment to reach 'net zero,' for companies, means staying consistent with a pathway to keep global temperature rise to less than 1.5°C, which would avert the worst impacts of climate change.[15] This is enshrined in the international commitment of parties to the Paris Agreement.[16]

In accordance with this global commitment, an analysis of the world's largest 2,000 publicly listed companies by revenue shows that 37.46% of East Asian companies and 58% of South Asian companies have already committed to achieving net zero.[17] For companies to achieve net zero by 2050, it is essential that they understand feasible pathways to decarbonisation. It would not, for example, be realistic to continue business-as-usual from now until 2040, and only drop emissions thereafter. That would require steep, disruptive, and extremely costly measures that would probably not achieve net-zero objectives in any event.

The momentum towards net zero is supported by technical and regulatory developments for the energy transition. Climate change has accelerated a fundamental and transformative shift in what we rely on for sources of energy. It is estimated that, globally, renewables will overtake coal to become the largest source of global electricity generation by early 2025.[18] The shift away from fossil fuels and towards renewables will impact Southeast Asia equally with—if not more than—the rest of the world. This is because Asia is the main driver of the growing demand for energy, with China, Southeast Asia and India expected to make up 70% of the demand growth rate between 2023 and 2025.[19] The International Energy Agency (IEA) also forecasts that Asia will account for half of the world's electricity consumption by 2025. Regionally, the argument for an accelerated transition is made more compelling by seeking to ensure energy security. Southeast Asia is currently largely dependent on fossil fuels. This increases the region's vulnerability to energy price shocks and supply constraints.[20]

There are many reasons for governments around the region to undertake initiatives and policies to ensure their countries are not left behind in the fastest energy transition in history.[21] Indeed, many countries in Southeast Asia have set national renewable energy targets to increase the share of renewables in their energy mix. Collectively, ASEAN has set a regional target of having 23% renewable energy share and 35% installed renewable energy capacity by 2025.[22] Further, nine out of ten ASEAN countries have committed to net-zero emissions targets by 2050.[23] These targets, both national and regional, provide the policy framework driving investment and development in the renewable energy sector.

Evolving policy and regulatory developments form part of a changing factual matrix within which businesses in Southeast Asia operate. Directors must navigate these regulatory changes and transition risks as they steer their companies in meeting the challenges of the net-zero transition. Directors that do not exercise due care in understanding and addressing these risks could be subject to legal liability.

3. LEGAL DUTIES AND RISKS FACING BOARDS AND COMPANIES

Climate change, and its associated risks, is no longer solely an environmental and social issue but also a material financial issue which will have far reaching impact on businesses across Southeast Asia. There is growing recognition, including by governments in Southeast Asia, that climate change will have financial consequences for businesses. For example, in its latest Financial Stability Review, the Monetary Authority of Singapore noted that, should there be a disorderly climate transition, this could be "*destabilising and disruptive for the financial system and could result in significant financial losses*" for financial institutions.[24] As the previous section explained, governments in Southeast Asia are already implementing policies and regulations to transition to a low-carbon economy. These policies, along with the physical consequences of climate change, will impact business models in various ways. In this rapidly changing ecosystem, while certain types of business activities may become less profitable, several new economic opportunities will emerge.

Growing consensus on financial impacts from climate change means that climate-related risks and opportunities are increasingly *clear and foreseeable*. Companies that do not adequately consider and manage these foreseeable climate risks, or contribute to climate change through harmful corporate activity, are increasingly facing legal action. At the same time, to the extent that a corporation is liable in a validly brought climate lawsuit, directors may also face personal liability for failing to act reasonably in steering the corporation to meet foreseeable climate risks.

This section explores these legal risks in view of latest developments in climate-related litigation from around the world. Part A provides an overview of climate-related litigation against corporations and includes examples of how climate-related legal risks have materialised in Asia and elsewhere in the world. Part B explains the duties of directors in the climate context, as relevant to Southeast Asia.

> **Today, ASEAN is facing an increasingly complex disaster risk landscape. Climate change is a serious threat as it increases the frequency and intensity of disasters which reverses hard-won development gains by decades.**
> ***Secretary-General of ASEAN, H.E. Dr. Kao Kim Hourn at 20th Southeast Asia Red Cross Red Crescent Leaders Meeting (September 2023)***

A. CLIMATE LITIGATION AGAINST CORPORATIONS

In a survey conducted by Baker McKenzie, environmental, social, and governance (ESG) disputes were identified as the top litigation risk facing organisations in 2024. Amongst the types of environmental disputes presenting the most risk, litigation on *climate change* and the *energy transition* drew the most responses.[25] The Grantham Research Institute on Climate Change and the Environment has found, in its most recent annual overview of global trends in climate change litigation, that 230 new climate cases were filed in 2023, with cases in the Global South increasing and gaining more attention.[26] In identifying the types of risks legal action on climate entails, academics from the University of Oxford have observed:[27]

> **Climate-related legal actions also introduce financial risks that are not directly related to firms' underlying transition and physical exposure. These additional risks derive primarily from *obligations to manage risks or emissions,* or from regulatory requirements to disclose climate risk and not to make inadequate or misleading statements about risk management, investment policies (such as "*greenwashing*"), and *Paris-alignment of business plans.***

GREENWASHING ALLEGATIONS: In principle, greenwashing refers to misleading information regarding a company's environmental impact or plans. Both overstating current or future environmental benefits and understating negative environmental impact can constitute greenwashing.

Legal risk regarding greenwashing arises from laws which safeguard true and fair disclosure in commerce and decision-useful information for consumers and investors, who seek out greener purchases and investments. Such laws focus on the 'misleading' nature of claims or statements. Greenwashing complaints can be made to advertising standards self-regulatory bodies, or competition and consumer protection authorities. Complaints can also be made to OECD National Contact Points, although their findings are not legally binding or directly enforceable in courts.

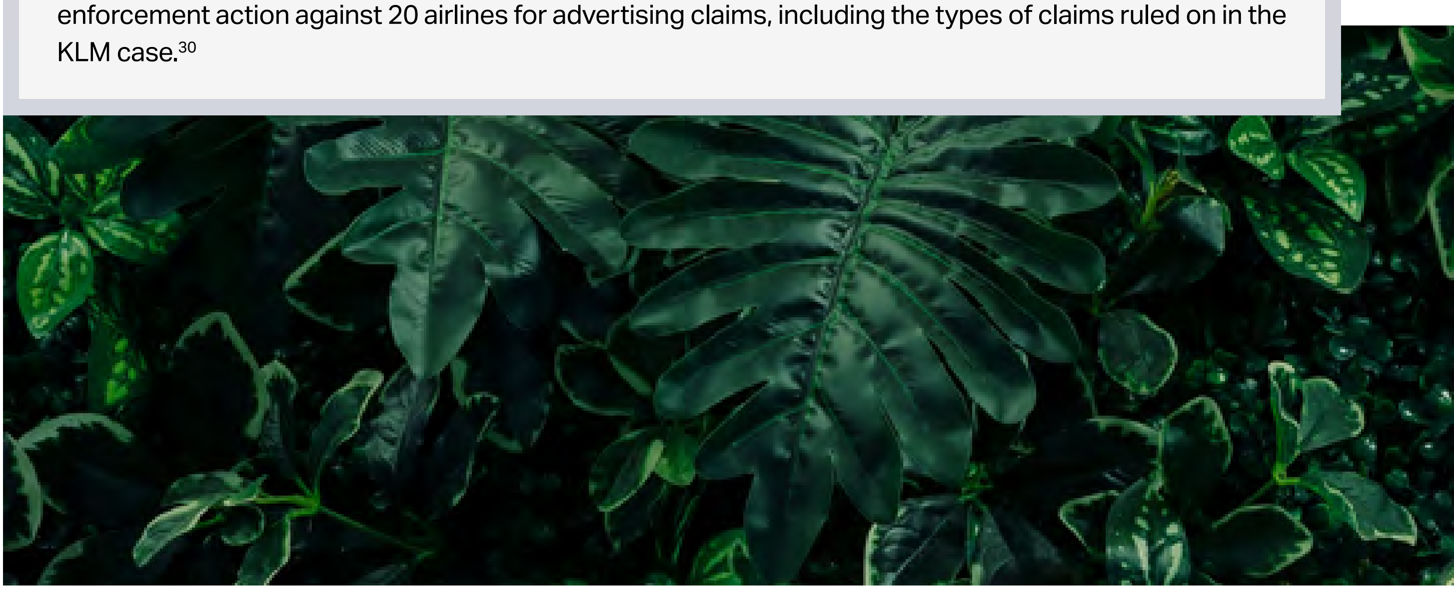
Greenwashing can also form the subject of disputes between commercial parties, through misrepresentation of environmental information and/or actions, whether relating to corporate strategy, technologies, projects, products, services, or assets. Even in the absence of legal action per se, a credible claim that a corporation is greenwashing can have significant reputational damage leading to loss of trust and support in the brand amongst consumers and other stakeholders. Sectors with highly polluting activities and/or a high degree of exposure to consumer preferences tend to be the most at risk.

Whilst greenwashing claims have been brought mainly in the US and EU, examples of these are also emerging in Asia. In general, existing legal developments focus on whether communication to consumers and investors is backed by a science-based, 1.5°C-aligned approach to transition (an adequate transition plan), and whether 'climate solutions' are communicated in an accurate and proportionate manner. ClientEarth has published introductory guides for the Asian finance industry and specific to Japan on how to avoid greenwashing.[28] These explore how greenwashing might manifest in the financial sector, and how financial institutions might be able to guard against greenwashing.

FOSSIELVRIJ NL V KLM (2024) – AMSTERDAM DISTRICT COURT

In March 2024, the District Court of Amsterdam ruled that KLM was liable for greenwashing in its sustainability advertising, breaching EU consumer law. This legal claim was made by FossielVrij NL and Reclame FossielVrij and supported by ClientEarth, and is the first greenwashing case worldwide to rule on claims relating to the adequacy of corporate transition plans. The case makes clear that companies need to ensure that statements regarding their transition plans to consumers (and, by extension, to investors) must be substantiated by an adequate transition pathway encompassing all significant elements of corporate climate impact.[29]

In April 2024, the European Commission and the network of European consumer authorities commenced enforcement action against 20 airlines for advertising claims, including the types of claims ruled on in the KLM case.[30]



ADMINISTRATIVE GUIDANCE ISSUED IN RELATION TO POSCO BY THE MINISTRY OF ENVIRONMENT, SOUTH KOREA

In October 2023, the Ministry of Environment and Korea Environmental Industry & Technology Institute published the "Guidelines for Labelling and Advertising of Eco-friendly Business Activities". These Guidelines set out basic principles for labelling and advertising of eco-friendly business activities such as truthfulness, clarity of expression, specificity of the subject, substantiation, completeness of information, relevance, verifiability, and voluntariness.[31]

In July 2024, after a complaint was raised by climate advocacy charity Solutions For Our Climate, South Korea's Ministry of Environment found that the steel and infrastructure company POSCO had not acted in accordance with the Guidelines, as POSCO had misleadingly promoted its steel products as low-carbon when they were in fact produced in a carbon-intensive manner. The Ministry requested POSCO to correct this misleading advertisement, and POSCO complied.[32]

CLIMATE-RELATED HARM: In this scenario, parties that have suffered various kinds of injuries from climate change seek redress from corporate entities that are responsible for such harms. It is envisaged that corporate liability will continue to increase, moving beyond claims against carbon majors / fossil fuel companies alone. Cases are beginning to be filed against automobile manufacturers and financial institutions.[33] Importantly, as one example will show, corporations are even sought to be held liable for their impacts abroad. The relief sought is not damages in all cases – certain cases seek injunctive or declaratory relief instead of monetary compensation (i.e. relief in the form of a court order requiring a defendant to carry out or cease certain activities, or a court declaration as to parties' legal rights).

MILIEUDEFENSIE ET AL. V ROYAL DUTCH SHELL PLC. (2019) – THE HAGUE DISTRICT COURT[34]

On 5 April 2019, the environmental organisation Milieudefensie (Friends of the Earth Netherlands) and co-plaintiffs including various NGOs and over 17,000 citizens filed a lawsuit against Royal Dutch Shell in the District Court of The Hague in the Netherlands. They alleged that Shell's contributions to climate change due to its control and influence over approximately 2.5% of global emissions violate its duty of care (unlawful endangerment) under Dutch law interpreted in light of Shell's human rights responsibilities and societal consensus. The plaintiffs sought a Court ruling mandating Shell to reduce its CO2 emissions by 45% by 2030 compared to 2010 levels, referencing the global pathway to net-zero emissions by 2050, in alignment with the temperature goal in the Paris Climate Agreement. This case builds on the precedent set by the decision made in *Urgenda Foundation v State of the Netherlands (2015),*[35] which was brought by a Dutch environmental group, the Urgenda Foundation and 900 Dutch citizens suing the Dutch government demanding more action to prevent global climate change. The Hague District Court held that the Dutch government failed to protect its citizens from climate change, and subsequently extended similar accountability to private companies like Shell.

On 26 May 2021, the District Court of The Hague ruled in favour of the plaintiffs, ordering Shell to cut its net CO2 emissions across all operations by 45% by 2030 relative to 2019 levels. The Court emphasised that Shell has a legal obligation to 'do its part' to mitigate climate change impacts based on the standard of care in Dutch law. Following this ruling, Shell appealed on 20 July 2022, and the case is currently pending, although the first instance Court's order remains in effect in the meantime.

ASMANIA ET AL. V HOLCIM (FILED 2023) - CANTONAL COURT OF ZUG, SWITZERLAND: A CASE BROUGHT BY INDONESIAN PLAINTIFFS AGAINST A SWISS COMPANY[37]

This case is notable for the transboundary nature of the claims – a Swiss-based corporation is sought to be held liable, in Swiss courts, for the alleged impacts of its activities in Indonesia. The global nature of climate impacts means that plaintiffs in foreign countries may seek to hold businesses liable for their climate impacts across borders.

In January 2023, four inhabitants of the Indonesian island of Pari acted on behalf of the 1500 inhabitants of the island and sued major buildings materials and cement company, Holcim, in Switzerland where it is headquartered. The complaint was filed after the claimants' attempt at conciliation was unsuccessful. Rising sea levels in Pari have led to increased flooding and damage to houses, streets, and businesses on the island. Alleging various violations of the Swiss Civil Code by Holcim, the claimants are requesting (1) proportionate compensation for the damage suffered as a result of climate change, (2) financial contribution to adaptation measures (primarily to prevent flooding), and (3) that Holcim rapidly decrease its CO_2 emissions, specifically by 43% by 2030 and 69% by 2040 (relative to 2019 levels). This case is currently pending.

SMITH V FONTERRA COOPERATIVE GROUP (2024) - SUPREME COURT OF NEW ZEALAND[38]

The plaintiff, a Māori elder and spokesperson for the Iwi Chairs forum, brought tort claims against seven corporations. The plaintiff alleges that, in 2020-21, the defendants were cumulatively responsible for more than one-third of New Zealand's total reported GHG emissions. The tort claims are based on public nuisance, negligence and a proposed new "climate system damage tort." Claiming customary interests in a block of Māori freehold land on the coast of Wainui bay, the plaintiff has alleged that the defendants' activities will result in increasing sea levels, irrevocably damaging his family land by "physical loss of land from erosion and inundation, the loss of productive land, the loss of economic value, and the loss of sites of cultural and spiritual significance." The plaintiff has sought declaratory and injunctive reliefs.

This case is presently pending. In its latest decision in February 2024 relating to this case, the Supreme Court of New Zealand has held that the matter will proceed to trial, rejecting the defendants' contentions that there was no "arguable cause of action." A typical hurdle that such litigations have encountered is the "special damage rule" - in a public nuisance case, a plaintiff must show he suffered different damage than that suffered by other members of the community. But here, the Supreme Court held that the plaintiff had a tenable claim because he pleaded impacts on fishing and cultural interests which "go beyond a wholly common interference with public rights."

Though this case is currently pending, businesses and directors should take note that the impact of climate change on sites of cultural significance may give rise to liability in future cases.

JAPANESE YOUTH V JERA & OTHERS [10 THERMAL POWER COMPANIES] (2024) - NAGOYA DISTRICT COURT[39]

In August 2024, the first youth-led civil climate case in Japan was filed. Sixteen young Japanese people, aged 14 to 29, filed a lawsuit against Japan's ten biggest thermal power companies. These companies are thermal power generators who emit around 30% of Japan's CO_2 emissions. The plaintiffs ask that the companies implement emissions reductions that are aligned to the global emissions reduction pathway benchmark proposed by the IPCC to achieve the 1.5°C target, i.e. emissions reduction of 48% by FY2030 and 65% in FY2035 based on FY2019 emissions. The plaintiffs also contend that the companies' emissions reduction plans are "insufficient" and "lacks effectiveness" in light of the continued high emissions of these companies. This is in breach of Japanese tort law that requires the protection of the plaintiffs' extremely important rights or interests, including their life, health, and property (Article 13, 25, and 29 of the Japanese Constitution) from the effects of climate change. Further, as the companies are members of associations that coordinate climate action, they have a joint responsibility to decarbonise.

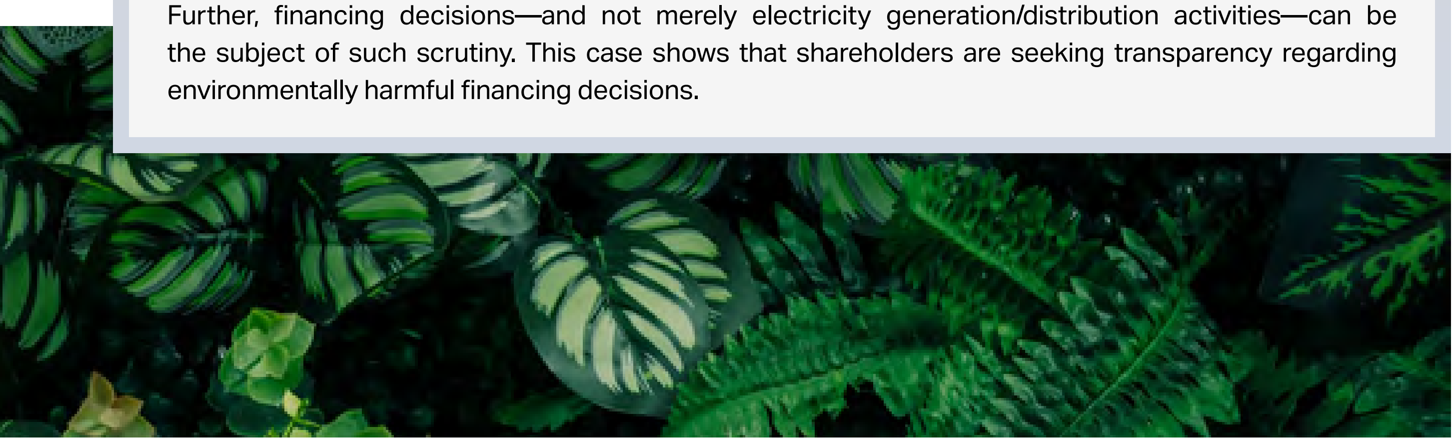
The case references other climate cases such as *Milieudefensie v Shell* (2019) and *Smith v Fonterra Cooperative Group* (2024) to outline how there exists an international standard for companies to respect human rights within the context of climate impacts. This case is currently pending.

LIABILITY FOR FINANCING CLIMATE-DAMAGING ACTIVITIES: Such litigations concern the liability of financial institutions for lending to or investing in projects that contribute to climate change. Corporations should take note that it is not only high-emitting corporate activities that can lead to liability. Climate-relevant financing decisions are also increasingly being scrutinised. Claims have been brought against financial institutions that help finance carbon-intensive industries or companies. These have included litigation by plaintiffs to obtain information regarding financing decisions.

ABRAHAMS V COMMONWEALTH BANK OF AUSTRALIA (2017) - FEDERAL COURT OF AUSTRALIA[40]

The plaintiffs, shareholders of the respondent bank, filed a lawsuit seeking a declaration that the bank had violated the Australian Corporations Act as it had failed to report its climate change-related business risks in its annual report. The plaintiffs referred in particular to the bank's failure to report on risks arising from potential financing of the contentious Adani Carmicheal coal mine. They also sought an injunction requiring the bank to report on these risks and its management of these risks. The plaintiffs withdrew the lawsuit when the bank released its next annual report acknowledging climate change risks and promised to undertake climate change scenario analysis on its business.[41]

This case illustrates shareholders' increasing scrutiny of companies' climate-related decision making. Further, financing decisions—and not merely electricity generation/distribution activities—can be the subject of such scrutiny. This case shows that shareholders are seeking transparency regarding environmentally harmful financing decisions.



CONTRACTUAL LIABILITY: As the effects of climate change increasingly cause extreme weather events, this is likely to result in a rise in commercial disputes, as commercial entities increasingly find it difficult to perform their contractual obligations. This is particularly the case in Southeast Asia, a region in which infrastructure development is necessary to ensure sustainable economic expansion, and which faces a burgeoning infrastructure financing gap.[42] As climate-induced extreme events intensify and populations and ageing infrastructure become more compromised and vulnerable,[43] climate change is likely to impact contractual obligations between a variety of commercial actors, including corporations and their sub-contractors, suppliers, customers, lenders and investors.

While corporations may once have been able to rely on force majeure clauses that excuse them from performing their contractual obligations when an extraordinary circumstance beyond the control of the contracting parties occurs, the increasing foreseeability of climate-induced weather events means that corporations may no longer be able to evade liability in this fashion.[44] Contractual liability can result from both physical risks and transition risks arising from climate change. Some illustrations of possible contractual disputes are as below:

Physical risk
- Disputes on insurance contracts related to physical assets impaired by weather extremes.
- Breach of contract resulting from supply chain disruptions because of more frequent and less predictable natural disasters.

Transition risk
- Contractual disputes may impact carbon-intensive businesses where a shift in consumer or investor sentiment towards low-carbon alternatives leads to revision in asset value or stranded assets. This could impact revenues and prevent such businesses from meeting contractual obligations.
- Changes in law and policy such as the introduction of carbon pricing mechanisms may lead to contract performance becoming financially unviable. In certain cases, changes in law may render some contracts unenforceable.

Additionally, as climate becomes high on the agenda of regulators and, increasingly, the whole of society, it is likely that a growing number of climate-related clauses will be found in contracts. Aside from clauses that seek to avoid anticipated disputes, contracts could also contain obligations to achieve net zero, e.g. contractual emissions reduction targets. A failure of a company to meaningfully manage its climate-related risks or seize on its opportunities might mean a failure to meet evolving contractual expectations, thereby breaching these clauses. Boards have a duty to act in the face of increased instances of extreme weather events to build a climate-resilient company.[45]

STEPHENS RANCH WIND ENERGY, LLC ET AL. V CITIGROUP ENERGY INC. ET AL (2021) - SUPREME COURT OF THE STATE OF NEW YORK, USA[46]

Stephens Ranch, an operator of wind farms in West Texas, was disabled by the Polar Vortex storm known as the "Great Texas Freeze" in February 2021. This resulted in it failing to perform its obligations under a long-term contract with Citigroup Energy ("Citigroup"), which incurred losses as it had to purchase power from other suppliers. When Citigroup sought to invoice Stephens Ranch pursuant to the contract, Stephens Ranch argued that it was not liable because its contract with Citigroup contained a force majeure clause.[47] Stephens Ranch sought a declaration from the court that it was excused from its obligations under the contract during the storm.[48] However, the court denied Stephens Ranch's request. It observed that Stephens Ranch did not prepare for the storm despite a report from the Federal Energy Regulatory Commission ("FERC") which recommended, as early as 2011, that power generators should prepare to withstand extreme low temperatures. Ultimately, Stephens Ranch settled the case.

This case illustrates that as previously unusual weather events become more frequent due to climate change, and therefore can be anticipated, parties may not always be able to rely on force majeure where performance of contracts is disrupted. Here, one of Citigroup's arguments was that many other operators, including wind farms, continued to perform their obligations during the storm.[49] What emerges is that as some businesses prepare themselves for climate impacts, it will become increasingly difficult for the laggards to justify non-performance of contractual obligations.

REGULATORY ENFORCEMENT: Governments are introducing climate-related regulations that not only impact environmental compliance, but also various aspects of business. Examples of regulatory action companies might face are:

- Regulatory action for failure to comply with emissions disclosure requirements.
- Action taken by securities regulators against companies that misstate to investors the potential impact that climate change might have on the company's business. Failure to disclose such risks could lead to inaccurate assessment of financial prospects / returns.
- Action taken by advertising standards bodies and consumer protection bodies, where failure to disclose climate risks causes losses to customers.

Ultimately, the urgency of the climate emergency is rapidly changing the circumstances in which directors have to make decisions, and the type of actions that directors must take to fulfil their legal obligations. Directors must factor in legal risks, both in the form of litigation risk and the risk of regulatory enforcement or changes, when making climate risk assessments.

Directors will have to prepare their business activities and operations for a low-carbon future, which will invariably involve changes in laws and policies. Additionally, directors should also be aware of the knock-on impacts that exposure to legal risks can entail. Specifically, "*[i]ndividual firms may be exposed to amplified risks directly, but the possibility of legal action can also raise risk perception and borrowing costs.*"[50] In other words, the cost of doing business exponentially increases should climate change risks not be properly managed and mitigated.

Finally, it is important to recognise that other forms of risk exist, should directors fail to manage and consider climate-related risks and opportunities. These include reputational risk, rising costs of carbon-intensive products (as opposed to low-carbon alternatives), rise in insurance premiums for not properly taking mitigating measures against climate risks, lower profits or financial returns owing to changing consumer or investor preferences (which may, at times, also lead to legal exposure).

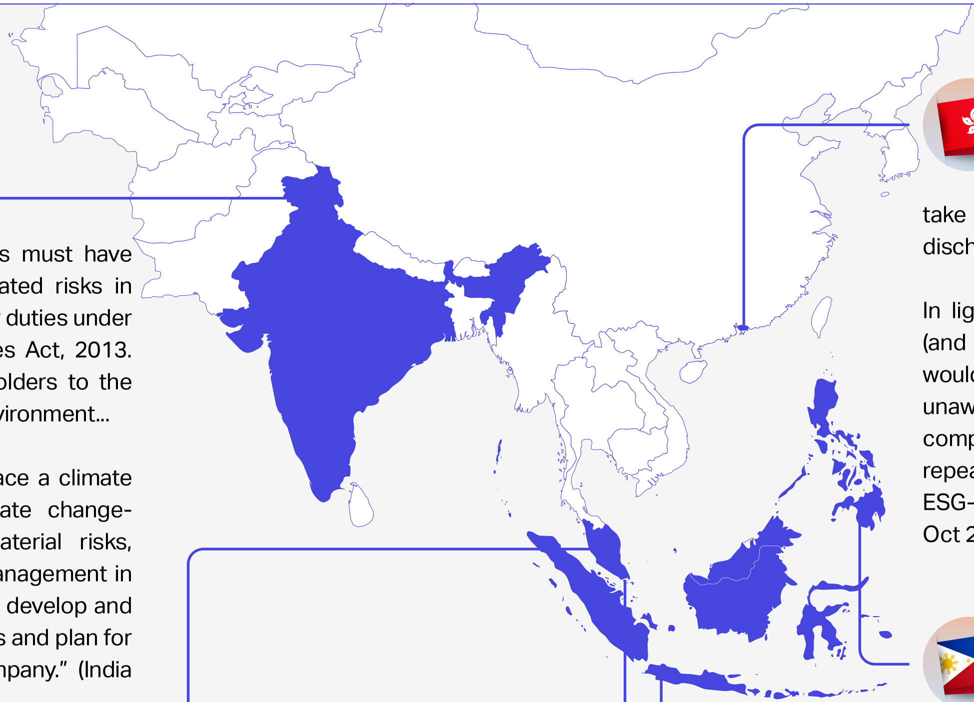
B. LEGAL RISKS FACING SOUTHEAST ASIAN DIRECTORS

No matter where in Southeast Asia he or she may be from, a director of a company generally has at least a twofold duty. First, a director acts as a fiduciary of a company and therefore must act bona fide in the best interest of the company. This is often synonymous with the duty of loyalty, to act honestly and in good faith. Second, a director generally owes a legal duty of competence, i.e., to exercise due care, skill, and diligence in the discharge of his or her functions.

The nature and contour of these duties are heavily dependent on the market, social and regulatory context and therefore constantly evolve. What one may consider a reasonable exercise of care and diligence 30 years ago would look vastly different today. As evidence of climate-related risks and opportunities faced by businesses continues to grow, it becomes increasingly difficult for directors to reasonably claim they were unaware of these issues. Directors may be personally liable and subjected to claims for monetary damages for the financial losses that result from their failure to ensure that the company's business strategy appropriately addresses climate considerations.[51]

In Southeast Asia, directors' duties in the climate context are especially relevant because of the high occurrence of inter-generational ownership of companies in the region. This makes it even more important for directors to appreciate the profound economic risks that cross-generational issues like the climate crisis and the net-zero transition pose. If business interests are to be preserved over the next 10 to 20 years, directors must fulfil their fiduciary duties by taking deliberate steps to prepare their companies for the transition to a low-carbon economy. In Southeast Asia, as in other parts of the world, there are increasing obligations for corporate boards to lead their companies' climate transitions. For instance, the Malaysian Code on Corporate Governance states that "the board together with management [take] responsibility for the governance of sustainability in the company" and expects the board to "stay abreast with and understand the sustainability issues relevant to the company and its business, including climate-related risks and opportunities."[52] In Thailand, the central bank calls on the boards of financial institutions to "set strategic directions, risk appetite, key policies, and overall framework to address both short-term and long-term environmental changes."[53] Finally, the Philippines' Code of Corporate Governance for Public Companies and Registered Issuers recommends that the Board should promote the creation of "wealth, growth and sustainability".[54]

Each jurisdiction's company law, and therefore the content of a director's duty, will naturally vary. Yet, leading corporate counsel from various Asian jurisdictions have opined that directors are required to integrate climate risks and opportunities into governance in order to validly discharge their duties, and face potential liability if they do not.[55] The following table provides an overview of the conclusions of legal experts on directors' duties on climate change in Malaysia,[56] Singapore,[57] the Philippines,[58] Indonesia,[59] Hong Kong[60] and India.[61] The Commonwealth Climate and Law Initiative (CCLI) has commissioned a number of jurisdiction-specific legal opinions written by leading corporate counsel on directors' duties on climate change.[62] These legal opinions, together with the Climate Governance Initiative's and CCLI's 'Directors' Duties Navigator: Climate Risk and Sustainability Disclosures',[63] are useful resources which provide jurisdiction-specific analysis on the legal duties of directors to address climate-related risk. Another helpful resource is the publication by the Nanyang Technological University of Singapore and the Raoul Wallenberg Institute on "Shareholder litigation in response to the climate emergency and human right to a healthy environment in Asia and the Pacific."[64]



India: Directors of companies must have regard to climate change-related risks in the course of discharging their duties under section 166 of the Companies Act, 2013. Directors' duties extend beyond shareholders to the community on matters concerning the environment...

Directors are best advised to have in place a climate risk management policy, disclose climate change-related risks, assess and mitigate material risks, integrate climate change-related risks management in their business risk management strategy, develop and execute plans to reduce carbon emissions and plan for more sustainable operations of the company." (India Opinion, pp. 3-5, Sep 2021)

Malaysia: "[D]irectors 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...

[It] is no longer possible for directors to ignore climate change considerations as part of their fiduciary duty to act for a proper purpose in the best interest of the company and in their discharge of their duty of care, skill, and diligence." (Malaysia Opinion, pp. 51-52, Jul 2022)

Singapore: "Directors play a critical role in companies as they, acting as a board, are the directing mind of any company. Many regulations in Singapore, including regulations directed at mitigating climate change, prescribe that directors can, under certain circumstances, be made personally liable for the company's breaches of these regulations...

[D]irectors of Singapore companies would be well advised to acquaint themselves with the activities of their companies which may impact, or may be impacted by, climate change, and take action as necessary to ensure that climate change issues are addressed by their companies." (Singapore Opinion, pp.2-3, Apr 2021)

Hong Kong: "[To] the extent that climate change risks intersect with and affect the interests of such companies (in Hong Kong), directors are both entitled, and obliged, to take such risks and considerations into account in the discharge of their obligations to the company...

In light of the aforesaid... directors of listed entities (and certain other regulated entities, going forward) would find it difficult to claim that they were reasonably 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." (Hong Kong Opinion, pp.1-2, Oct 2021)

Philippines: "[D]irectors of for-profit corporations are bound to take into consideration climate change-related risks in the discharge of their fiduciary duties of obedience and diligence and to abide by the "rules of good corporate governance" in fulfilling their companies' long-term economic, moral, legal and social obligations towards their shareholders and other stakeholders" (Philippines Opinion, p.112, Oct 2022)

Indonesia: ".. when considering what is detrimental or beneficial to the company, the Directors must take into account factors that influence / pertain to a company's overall business viability and longevity, which arguably should include climate-related strategies, risks and transition plans and external domestic and international pro-climate developments. Similarly, Directors should, of their own accord, implement business plans that make provision for climate-related matters and developments.' (Indonesia Analysis, p.19, Nov 2022)

It is acknowledged that courts in most of the above jurisdictions have some form of 'business judgment' rule (even if not always in name). This seeks to accord deference to the commercial decisions made by directors and avoids judging those decisions with hindsight. As such, directors will not be made liable simply for a bad decision, if the decision was reasonably and honestly made.

In many instances, this means a director would need to undertake steps to obtain relevant information and use such information to arrive at a considered decision. An uninformed decision will not suffice where there is mounting evidence that climate change and its financial implications are uncontroversial, well-known, and foreseeable. Regulations, including disclosure obligations discussed in the next section, are coalescing towards more consistent standards of climate governance worldwide. In many jurisdictions, such standards are becoming mandatory, and legal sanctions will likely follow for non-compliance. Investor and broader stakeholder scrutiny on how directors of a company are accounting for climate-related risks is growing.

It is therefore no wonder that the constant refrain in all the above legal opinions is that directors should be identifying, evaluating, and managing climate-related risks and impacts, risking a breach of their legal duties if they do not. A director cannot delegate the identification and evaluation of climate-related risks and their impact to other directors or employees without adequate supervision.[65] If a director disagrees with a climate-related decision taken in a board meeting, then he must raise that as a matter of record.

As stated in the legal opinion in respect of Malaysia, directors' failure to consider primary climate risks in the form of physical risks and economic transition risks "creates additional liability risks in the form of exposure to litigation instituted personally against directors".[66] Litigation risks are already materialising against directors worldwide. The following examples are worth noting:

CLIENTEARTH V SHELL PLC & OTHERS (2023)[67] - HIGH COURT OF ENGLAND AND WALES

A fiduciary duty claim was recently taken against Shell's board of directors in the UK by one of the company's shareholders, ClientEarth UK.[68] The claim sought to hold Shell's directors personally liable for failing to properly manage the material and foreseeable risks posed to the company by climate change. It was the first ever claim worldwide to seek to hold company directors liable for climate risk mismanagement. It was argued that the Board had breached their duties to promote the success of the company and to exercise reasonable care, skill and diligence (under sections 172 and 174 of the Companies Act 2006 (UK), by failing to put in place a credible Paris Agreement-aligned transition strategy for the company, and by failing to comply with the order of the Dutch Court in *Milieudefensie et al. v Royal Dutch Shell plc.* (2019) (See Section 3.A., subsection 'Climate-related harm' for a summary of that case.) ClientEarth argued that the directors' actions were *"irrational and fall outside the range of reasonable decisions open to the directors, because they do not put Shell on any pathway likely to meet the outcomes which the board recognises are necessary to promote the success of the company."*

The claim had the support from institutional investors with more than 12 million shares in the company.[69] Notwithstanding, the Court ultimately refused permission for the claim to continue.[70]

Despite this outcome, Shell's climate change strategy was called into question in a way that will likely lead to heightened scrutiny at shareholder meetings moving forward,[71] and demonstrates that there is concern among investors that companies are failing to truly prepare for the energy transition. A detailed briefing on the case is available here.

The Climate Governance Initiative notes that the dismissal of the case has been criticised by high profile commentators, including the former Justice of the Supreme Court of the United Kingdom, Lord Robert

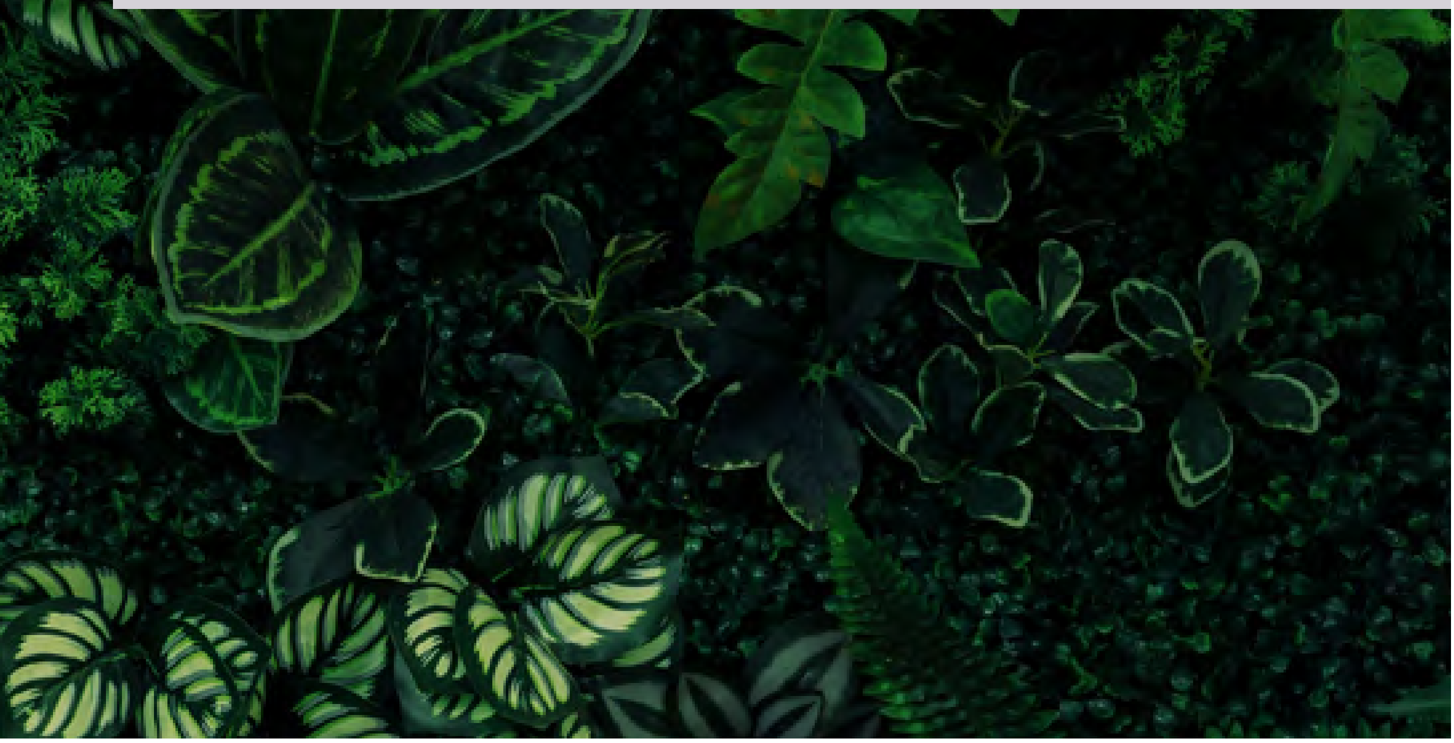
Carnwath.[72] Lord Carnwath finds the Judge's dismissal of the case at a preliminary stage "unpersuasive" and his reasoning "unconvincing." He concludes that this was a "missed opportunity" for providing guidance on directors' duties under the UK Companies Act.[73] The Climate Governance Initiative has observed that, in view of such criticisms, the possibility for future claims to be filed in the UK is left open.[74]

CLIENTEARTH V ENEA (FILED 2018) – REGIONAL COURT IN POZNAŃ AND ONGOING LITIGATION AGAINST PREVIOUS DIRECTORS OF ENEA (FILED 2024)

On 24 October 2018, ClientEarth, a shareholder in the Polish utility company Enea SA, filed a claim against the company demanding the annulment of a resolution agreeing to the construction of the €1.2bn 1GW Ostrołęka C coal-fired power plant.[75] When constructed, the plant was projected to be "permanently unprofitable",[76] demonstrating it as economically harmful to the company in light of the climate transition risk.[77] ClientEarth argued that this demonstrated that the members of the management board and the supervisory board had failed their duties of due diligence and to act in the best interest of the company and shareholders.[78] In its first instance ruling on 1 August 2019, the Court ruled that the construction of the power plant was legally invalid, and this ruling was upheld on appeal.[79]

On 30 January 2024, Enea's management adopted a resolution in its extraordinary general meeting to sue the company's former directors and its insurers for lack of due diligence in its investment into the Ostrołęka C coal-fired power plant.[80] This was because the previous directors' investment decision occurred despite warnings that the plant would be unprofitable in light of rising carbon prices, cheaper renewable energy alternatives and new EU regulations making it harder to secure financing, as further demonstrated by the result of the 2018 lawsuit.[81]

This case is the first of its kind and notable since it underscores directors' potential liability for ongoing fossil fuel investments in a rapidly shifting economic, policy and regulatory landscape. It is also highly relevant to insurers. In the present case, the company is seeking damages from the former management and supervisory board members who had voted in favour of the investment, and from its insurers under its directors' and officers' liability insurance.[82]



It has been said that directorship is no mere sinecure or honorary function.[83] It requires active monitoring of material financial risks the company faces. With the broader market shifting its perception that climate change now poses such risks, a director must consider them as it would any other form of risk. Directors should feel compelled to do so not only to minimise allegations of a breach of legal duty, but to safeguard the long-term success of the company.

Further, it is not only violations of fiduciary duties that can lead to directors being held personally liable. Although the general rule is that an officer of a company will not be held individually liable for a company's unlawful acts merely by virtue of his position, there are circumstances where directors may be held individually liable, for example in certain types of criminal cases.

BLOOM AND OTHERS V TOTALENERGIES (FILED 2024) - PARIS CRIMINAL COURT

In May 2024, three NGOs and eight victims of climate disasters filed a complaint[84] against TotalEnergies, its directors and main shareholders in the Paris Criminal Court for the offenses of "damaging biodiversity," "involuntary manslaughter," "failing to combat a disaster" and "deliberately endangering the lives of others." The complainants contend that TotalEnergies "has known the direct link between its activities and climate change for over half a century." Yet, it chose to "create doubt over climate science," "[fight] emerging climate regulations and "openly [lie] in public hearings." This case is currently pending.

Finally, it should be noted that the integration of nature considerations into directors' duties is increasingly recognised as essential for sustainable business practices. This is particularly relevant for Southeast Asia, which is home to some of the richest biodiversity habitats on the planet yet is facing significant threats from climate change and habitat loss. The issue is complex, with some of the highest rates of tropical deforestation being caused by multiple human activities such as the expansion of oil palm and rubber plantations, logging, and urbanisation.[85] Although this Guide focuses mainly on outlining climate-related developments and obligations of the Board, directors should note that nature-related risk is swiftly growing into one of the top agenda items for the board room. These risks include physical risks, transition risks which include legal risks, and systemic risk such as the collapse of ecosystems, shifting investor preferences and regulations as well as greater insured losses.

These risks and their legal implications have been explored by the first expert legal opinion on the subject, written by a legal team led by Sharif A. Shivji KC and Rebecca Stubbs KC, and commissioned by the CCLI and the climate change investment and advisory firm Pollination.[86] This legal opinion confirmed that company directors should consider nature-related risks in the exercise of their governance and disclosure duties under the law of England and Wales.[87] It is recommended that a company should have oversight of their dependencies and impacts of their business on nature, and ensure that nature-related matters are embedded into their business strategy. Effective disclosure should also be ensured so that this process is as effective as possible.[88] The cousin to the Taskforce on Climate-related Financial Disclosures (TCFD), the Taskforce on Nature-related Financial Disclosures (TNFD)'s final recommendations were published in September 2023 and provides principles for integrating nature-related issues into the five pillars shared with the TCFD, which are corporate governance, strategy, risk management, and metrics for sustainability reporting.[89]

4. REPORTING ON CLIMATE

A. CLIMATE DISCLOSURE OBLIGATIONS

The previous section explained the climate-related legal risks facing boards and companies. Another major development impacting directors' duties is the growing expectation for companies to make climate-related disclosures. This reflects the emerging understanding that investors, regulators, customers, and other stakeholders can only gain a complete understanding of a company's financial prospects if climate risks and liabilities are disclosed. Regulatory standards and guidance have been rapidly evolving, being issued at the international, regional, and domestic levels. Key international standards and guidance for climate disclosure reporting include the TCFD.[90]

Most notably, the International Sustainability Standards Board (ISSB) issued standards on climate and sustainability-related disclosures in June 2023,[91] with the aim of creating a global baseline for the capital markets.[92] The ISSB standards such as the IFRS S1 and S2 are consistent with the recommended disclosures of the TCFD.[93] These new standards were endorsed by the International Organization of Securities Commissions (IOSCO) and welcomed by Asian financial markets.[94] Since the release of these standards, many jurisdictions in Asia, such as Hong Kong, Japan, South Korea, Malaysia, the Philippines, Singapore, and Taiwan, have plans to implement them as early as 2025 and as late as 2028.[95]

These developments signal a significant shift in the market to deliver high quality, globally comparable sustainability information informing companies about what and how they need to disclose. Southeast Asia is no exception. Already, a 2022 report of six ASEAN countries, i.e., Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam, demonstrated an overall climate disclosure rate of 46%.[96] This is closely connected to regulations that mandate climate-related disclosures in the region. The table below provides an overview of disclosure obligations in select jurisdictions in Southeast Asia.[97]

Examples of mandatory corporate climate / sustainability disclosure regulation in Southeast Asia

Indonesia	Malaysia	The Philippines
Indonesia does not have a sustainability disclosure framework for all companies. However, there is a general sustainability reporting obligation for public companies, issuers, and financial service institutions to provide accurate, transparent, and timely information related to the protection and management of the environment.[98]	Currently, Malaysia requires listed companies to make disclosures, and has announced the phase-in of ISSB standards for the market's sustainability reporting framework. The reporting regime will be phased in depending on applicable entities: Main Market listed issuers with market capitalisation of RM 2 billion (approx. US$ 417 million) will be asked to start adoption from 2025 with an expectation to achieve full adoption of IFRS S1 and S2 in 2027; Main market issuers excluded from the first description will be asked to start adoption in 2026 with achievement of complete adoption two years later; and lastly, ACE Market listed issuers (sponsor-driven market of Bursa Malaysia designed for companies with growth prospects) and non-listed companies with annual revenue of RM2 billion (approx. US$ 417 million) and above will be asked to start adoption in 2027 with complete adoption achieved in 2030.[99]	In February 2019, the SEC released a sustainability reporting guideline for publicly listed companies asking for disclosures on climate-related risks and opportunities on a comply-or-explain basis. The SEC is currently in consultation for a revised Sustainability Reporting Guideline and reporting form for publicly listed companies.[100]

Singapore	Thailand	Vietnam
Since FY2022, the Singapore Exchange has mandated all listed companies to include climate-related reporting in their sustainability reports in alignment with TCFD on a comply-or-explain basis. Continuous disclosure by issuers in agriculture, food and forest products, and the energy and financial industries began in FY2023. Listed companies are obliged to disclose information likely to have material effect on the price or value of securities in select sectors. The content of the disclosure includes their process of identification, assessment, and management of climate-related risks, their targets, and metrics for assessment of risk, and disclosure of their Scope 1, 2 and 3 emissions, if appropriate. The scope expanded to materials and buildings, and transportation industries in FY2024. Large non-listed companies will also be required to make climate disclosures from FY2027.[101] Companies can also access a free online portal to estimate their emissions, based on 200 localised emission factors. From 2025, new emission factors such as logistics, information communication and technology, cleaning and security services are expected as additions to the online registry.[102]	A Climate Change Bill is currently in the process of being considered. The second draft included provisions on climate change impact or risk assessment of large-scale government projects; a central database on GHG emissions and area-based risk of climate change; and appropriate mechanisms to provide economic incentives for GHG reduction among the private sectors. It includes penalties for those that do not provide, conceal providing, or provide false information. This could set the groundwork for complaints to be made against those who do not comply. The Bill also imposes an emissions reporting obligation on certain entities.[103]	Public companies are mandated to make certain disclosure requirements relating to their ESG performance in their annual reports. This includes corporate strategy towards sustainability objectives, the volume of GHG emissions in a year, and proposed measures to reduce emissions. The ESG report template under Circular 96 released in 2021 is aligned with the TCFD. It is the only document requiring such public disclosure and has been in effect since January 2021.[104]

A notable development in corporate-climate disclosure specific to small and medium enterprises is the launch by Capital Markets Malaysia of their Simplified ESG Disclosure Guide (SEDG)[105] in October 2023, which aims to assist small and medium enterprises (SMEs) to effectively disclose their ESG practices. The SEDG consolidates various complex ESG frameworks into a standardised set of 35 priority disclosures, categorised into levels starting from 'Basic', 'Intermediate', and 'Advanced'. This is to accommodate the varying sustainability maturity levels among SMEs and aligns with both local and international sustainability standards, such as the GRI and Bursa Malaysia's guidelines. Additionally, the SEDG includes sector-specific guidance for key industries such as Energy, Transport, Construction, Agriculture, and Manufacturing, with a focus on biodiversity and labour standards.

Further, the SEDG early adopter programme[106] provides SMEs with training and resources to facilitate their ESG reporting journey. This programme invites diverse stakeholders – including large companies, SMEs, FIs, government agencies, and chambers of commerce – to participate as early adopters. By joining the program, adopters gain access to valuable resources such as in-person training sessions, workshops, and updates on new developments related to the SEDG. This initiative aims to create a supportive ecosystem that encourages SMEs to embrace ESG disclosures, enhancing their competitiveness and relevance in the market. The programme categorises '(early) Adopters' based on their commitment level and engagement with the guideline. It not only simplifies the disclosure process for SMEs but also standardises expectations for stakeholders requesting ESG information. By providing a unified approach, the SEDG Adopter programme seeks to improve transparency and accountability across supply chains, ultimately contributing to a more sustainable business environment in Malaysia.

B. IMPACT OF FOREIGN SUSTAINABILITY DISCLOSURE LAWS

Foreign companies that are operating in Southeast Asia will also face obligations from disclosure regulations developing abroad. The impact of the European Union's Corporate Sustainability Reporting Directive (CSRD) is far-ranging. It requires large EU companies and listed SMEs as well as non-EU parent companies of a group with a significant presence in the EU (i.e. which generated a net turnover of EUR 150 million (US$166.3 million)[107] and at least one significant subsidiary or branch in the EU) to follow the European Sustainability Reporting Standards (ESRS) and make disclosures based on the concept of double materiality.[108] This means that companies must disclose how their own business activities affect the planet and its people, and how their sustainability goals, measures and risks impact the business's financial health.[109] The ESRS underpin the CSRD by describing all the information that companies must disclose in order to comply with the CSRD.[110]

CSRD will likely require at least 10,000 companies from outside the EU to comply with their human rights and environment-related obligations.[111] Notably, the European Financial Reporting Advisory Group (EFRAG)'s list of reporting standards (ESRS) which will fulfil the Corporate Sustainability Reporting Directive (CSRD) with their increased scope and quality of sustainability reporting regulations will be applicable to foreign companies. The CSRD will likely require at least 10,000 companies from outside the EU to comply with their human rights and environment-related obligations.[112]

ClientEarth has co-written a legal analysis of the CSRD as well as the Corporate Sustainability Due Diligence Directive (CS3D, mentioned in the following Sections 5 and 7), which provides policy recommendations for transposition into national law.[113] Even where the entry into force of regulations is delayed or uncertain, corporations are preparing themselves to comply in any case. For instance, although the implementation of the United States Securities and Exchange Commission rules on disclosure of climate risks faced delays in finalisation and, more recently, legal challenges to the rules, a 2023 report surveying 300 executives of U.S. based public companies found that 70% of business leaders would proceed with compliance regardless of when the rule would become U.S. law. In fact, 89% said they already report some ESG data.[114]

Corporations operating in Southeast Asia would have to consider the applicable disclosure frameworks — domestic and international—that apply to parent and subsidiary companies. Even if mandatory disclosures do not apply, companies interested in a balanced and thorough analysis of climate risks and opportunities and looking to get ahead of the curve could apply these disclosure methodologies to uncover material risks and promising opportunities. This is a key way for companies and boards to display climate leadership. Section 8 of this Guide elaborates on this with some examples.

5. THE INCREASING IMPORTANCE OF TRANSITION PLANS

Corporate climate transition plans are an important hallmark of an effective decarbonisation strategy and align closely with trends in corporate disclosure. Where climate-related measures have hitherto tended to focus on accurately measuring climate impacts, there is an increasing shift towards managing and mitigating those climate impacts. Transition plans should be credible, comprehensive, and consistent. Given the urgency of the net zero transition, transition plans should be part of corporate climate strategy, regardless of whether a corporation has voluntarily and explicitly made an emissions reduction pledge.

While the contours of a credible transition plan will depend on the specific industry of the corporation in question, boards may refer in general to guidelines such as the 'Integrity Matters: Net Zero Commitments by Businesses, Financial Institutions, Cities and Regions' by the UN High-level Expert Group on the Net Zero Emissions Commitments of Non-State Entities as a starting point for formulating an ambitious decarbonisation target, and the required action to achieve them. For example, a net zero commitment could require near-term targets to roughly halve emissions before 2030 and cut more than 90% of emissions before 2050. This process will require companies to formulate detailed transition plans with key short-, medium- and long-term milestones to reach net zero in a timely manner.

Ambition and targets must be converted into a concrete implementation plan that details operational changes, capital expenditures, and other measures to be taken in the short, medium, and long term to help companies. Therefore, over time, increasing regulation is likely to see companies compelled to come up with high quality transition plans. This will require a plan that permeates the entire entity, laying out its targets, actions, or resources for its transition towards a lower-carbon economy.[115]

Recent developments discussed below show that there is now, in some jurisdictions, governmental guidance as to what an appropriate transition plan requires.

A. RECENT DEVELOPMENTS

Transition Plan Taskforce (UK)

The Transition Plan Taskforce (TPT), a UK government initiative with private sector participation, has issued the TPT Disclosure Framework and its Implementation Guidance to clarify what a transition plan should include.[116] This TPT Disclosure Framework is consistent with and builds on the aforementioned ISSB IFRS S1 and S2 by laying out guiding principles for entities, categorised in elements of 1) building the foundations for ambition, 2) coming up with an implementation and engagement strategy, and finally 3) deciding on accountability measures such as metrics and targets and governance.

The TPT Disclosure Framework recommends that companies consider three inter-related dimensions—decarbonising the organisation, responding to the organisation's climate-related risks and opportunities, and contributing to an economy-wide transition.[117] The third element is important due to the collective nature of climate action. For example, overall emissions will not be reduced if a company seeking to decarbonise its operations simply offloads carbon-intensive assets to a buyer who will continue to operate it in the same (or more polluting) manner. Holding on to such assets but taking steps to reduce their emissions would likely be more effective. In this regard, the Development Bank of Singapore (DBS)'s recent decision to amend its sustainable financing policy to permit financing the early retirement of coal-fired power plants[118] is noteworthy.

The ISSB has formally taken over responsibility for the TPT's disclosure guidance materials – indicating that it will take steps to develop educational materials based on the TPT's work which have global applicability and are compatible with the global baseline set in IFRS S2, while ensuring high quality transition plan disclosure.[119]

Proposed Guidelines for Transition Planning (Singapore)

In Singapore, the Monetary Authority of Singapore has released proposed guidelines for transition planning, which are slated to be finalised later in 2024. It provides its supervisory expectations of financial institutions, including asset managers, banks, and insurers, in relation to transition planning processes. The objective is to ensure, with the global transition to a net-zero economy underway, that financial institutions transition their own investments, operations, and businesses in an orderly manner, so as to ensure the resilience and adaptation of its business models to the transformational shifts that companies will face. Similar regulatory developments are already taking place in the UK and Europe and may soon become more prevalent in Southeast Asian jurisdictions.

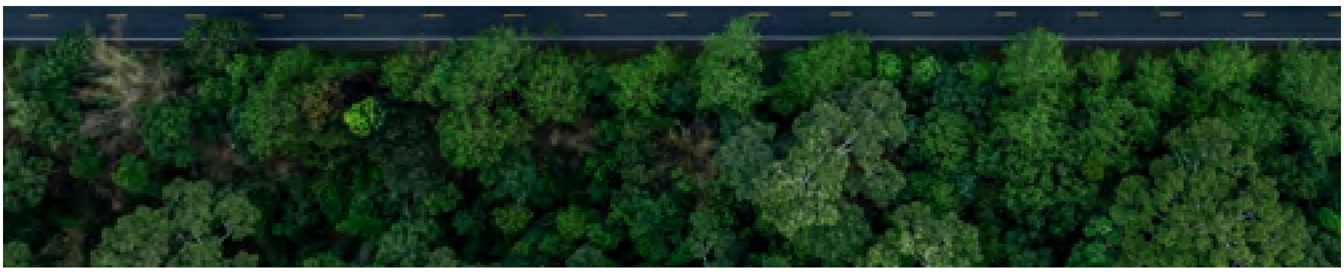
In a 2023 article in its Regulator's Column, the Singapore Exchange Regulation (SGX RegCo) has also set out three key elements of developing, executing, and disclosing a credible climate transition plan:[120]

1. Comprehensive understanding of material climate-related risks. SGX RegCo explains that identifying and understanding material risks and their interdependencies allows the company to concretely evaluate key business decisions and formulate a sound, strategic response to mitigate these risks.
2. Strong governance structures to ensure accountability for resourcing, financing, and executing the transition plan. SGX RegCo explains that formal oversight from the board of directors and senior management should set the right tone at the top, and that there should be accountability at all levels, supported by an appropriate incentive structure and capacity building to equip relevant personnel with the necessary skills and knowledge
3. Monitoring of actionable, science-based near- and long-term decarbonisation targets. SGX RegCo explains that the trajectory of such targets should be based on the latest climate science. Further, companies should outline processes and metrics to track progress against the transition plan. Companies should disclose forward-looking metrics, such as projections of emissions reduction over multiple time horizons, to create interim targets that drive implementation in the short and medium term. This would also allow stakeholders such as capital providers to track and understand the expected effect of the company's transition strategy, and benchmark targets against actual progress.

Transition Planning requirements in the CS3D

The EU's Corporate Sustainability Due Diligence Directive (CS3D)[121] sets out due diligence obligations as well as an obligation for large companies to adopt and put into effect, through best efforts, a transition plan for climate change mitigation which will be updated annually with an explanation on progress.[122] The CS3D applies to approximately 6,000 EU companies and 900 non-EU companies.[123] This plan must be aligned with the 2050 climate neutrality objective of the Paris Agreement as well as intermediate targets under the European Climate Law.[124] Large companies should describe a plausible scenario or pathway to demonstrate how their business model and strategy is compatible with the set goals. This means that large companies must set an objective of achieving net-zero GHG emissions (scopes 1-3) by 2050 at the latest, depending on sector, and consistent with a 1.5°C pathway. The transition plan must also tackle the company's fossil fuel exposure, meaning the climate transition plan "should address, where relevant, the exposure of the company to coal-, oil- and gas-related activities."[125]

The four key elements to be included in a climate transition plan are: time-bound and science-based emissions reduction targets for scopes 1 to 3, decarbonisation levers and key actions, an explanation and quantification of the investments and funding, and a description of the role of the administrative management and supervisory bodies. The CS3D details that large companies should prioritise absolute emissions reduction targets for scopes 1 to 3 for products and services in their portfolio, in line with their understanding of their value chains.[126]



Transition planning by companies in Southeast Asia

Notwithstanding the importance of transition planning, companies in Southeast Asia have not always adopted transition plans, nor fully considered how to deliver on their net-zero pledges. According to a Singapore-based independent director, "Most boards are pledging to 2050 targets but none of them will be around then. The problem is people kicking the can down the road. I always advocate for interim short-term targets to signal sincerity and intent. If you don't have some targets that will be achieved by 2027 or 2030, then you are greenwashing." The director's commentary reflects the importance of ensuring credible transition plans, to avoid the legal risk of greenwashing.

To date, few Southeast Asian companies have published a comprehensive and detailed transition plan, although some have developed higher-level roadmaps and, in the case of financial institutions, transition plans for specific sectors. However, the number of examples is growing. Some such examples are discussed in greater detail in Section 8(b).[127] There are some understandable challenges with the transition planning process. At some companies, there have been concerns about making—and fulfilling—a net-zero pledge due to the time horizon and uncertainties involved. According to a Philippines-based sustainability manager, "When net-zero commitment was first raised, some of our leaders wondered how we could make 30-year projections when corporate planning spans only 5 years and whether we had the financial resources and skillset to make good on it. In addition, some leaders had difficulty imagining what the world would look like in 2050. A year later, we committed to achieving net zero by 2050 and with each passing year – as we gain more experience and capabilities and accumulate more data so we know where to focus our efforts and how to evolve the organisation to get to net zero – we are getting more comfortable even though many uncertainties remain. It's an ongoing process but we're making good incremental progress."

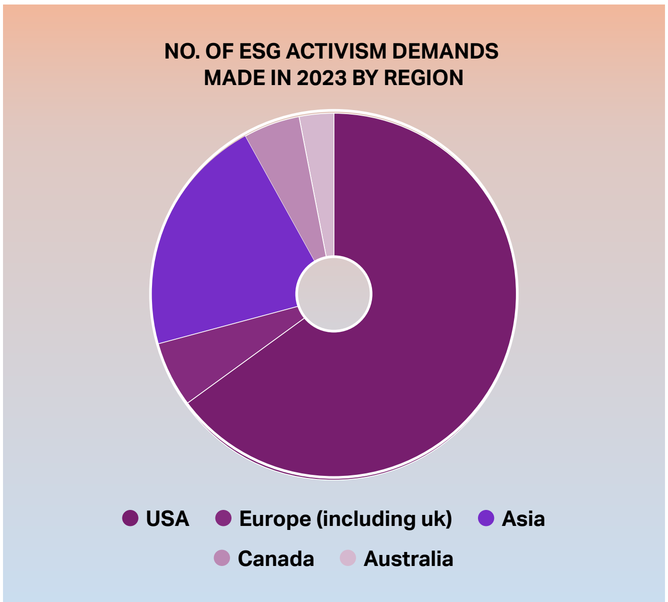
Another challenge is the reliance on certain assumptions in devising net-zero plans. For example, a risk management executive at a Thai financial institution noted that "it is very difficult to say definitively that 'this is the best path' because the assumptions are hard to validate, such as the regulations that will need to be in place in my country, the technologies that will be available here, and the expected local consumer demand."

In the shipping industry, decarbonising fleets rests to a significant extent on scaling up green ammonia, a technology that remains relatively unproven. At one Southeast Asian shipping company, dealing with such uncertainties means placing a strong emphasis on execution. As explained by the company's audit and risk committee chair, "We will need to pivot our business to survive. One critical component is to decarbonise our shipping fleet and launch zero emission vessels. This requires excellent execution, particularly since the technologies involved are not fully mature. So, the entire executive team is incentivised to focus on executing this plan."

Once finalised and published, targets and transition plans need to be reviewed periodically to reflect changes in the operating environment, state of climate science, advances in key technologies, passage of new regulations and policies, and other relevant factors. The China Light & Power Company (CLP), for instance, has committed to reviewing its targets and transition plan at least every three years.[128]

A. THE RISE OF SHAREHOLDER CLIMATE RESOLUTIONS

The shareholder-management relationship in Asia is evolving from what it was in the past. While corporate engagement by shareholders has in general been less active in Asia, recent trends indicate that this is beginning to change. In Asia, there was a 13.4% increase between 2022 and 2023 in the number of companies subject to shareholder campaigns.[130] The number of campaigns in Asia was 220 in 2023, a 23.9% increase compared to the previous year. The most growth was seen in China, the Republic of Korea, Singapore, and Malaysia.[131] The campaigns are also securing more wins, with 17.7% (42) of campaigns being at least partially successful in 2023—a growth from 4.6% (28) in 2022.[132]



Box 1: Number of ESG activism demands made in 2023 by region[129]

The overall rise in shareholder proposals (synonymous with resolutions) in Asia is likely to translate into a similar growth in climate-specific shareholder proposals. Shareholder climate resolutions have not traditionally been common in Asia, due in part to the novelty of the subject matter, the complexity of relevant legal rules and a traditionally more restrained approach to shareholders' involvement in company affairs. Yet, with climate-related risks and opportunities concentrated in Asia and an increasing focus by Asian regulators on net-zero transition pathways for the corporate sector, investors and shareholders are squarely confronting the importance of climate-aligned strategies for the companies that they invest in.[133]

2023 saw a global rise in the number of ESG-related demands by shareholders. There were 132 such demands globally, up from 114 demands in 2022, and almost double the 79 recorded in 2021.[134] In Asia, climate-related shareholder proposals are emerging as well. These can take many forms, including a request for increased transparency and disclosure, a request that the company become a net-zero business in their scope 1-3 greenhouse gas emissions, the adoption of a Paris-aligned business strategy with short, medium, and long-term goals, and disclosure of climate and energy policy lobbying.

CLIMATE ENGAGEMENT AND SHAREHOLDER PROPOSALS IN JAPAN

In Japan, shareholder proposals related to climate issues have been gaining prominence.[135] In 2024, no less than seven companies across a number of sectors (including banking, industry and utilities) received climate-related shareholder proposals.[136] A number of these resolutions received shareholder support in the 20% region which is considered "significant shareholder dissent". Good corporate governance requires an effective response to such significant dissent, as recognised by the UK Corporate Governance Code[137] and as recommended by proxy advisor Glass Lewis.[138]

As an example, a coalition of institutional investors that include Amundi, HSBC Asset Management and the Man Group have, along with the Australasia Centre for Corporate Responsibility, engaged with J-Power, a listed Japanese utility, since at least 2022.[139] In particular, this coalition has filed and supported shareholder proposals in 2022 and 2023 regarding different aspects of J-Power's alignment with the Paris Agreement, including its decarbonisation targets, the alignment of capital expenditure with decarbonisation targets and the incentivisation of board members with these objectives. Some of these resolutions have received what is considered very significant shareholder support (above 20%). In 2024, J-Power disclosed a new medium-term management plant with a granular plant-by-plant strategy, including the closure of up to five coal units by 2030.[140] In the announcement of this news, the President of J-Power said "*We deemed it necessary to demonstrate to shareholders our strategy for coal power plants on a site-by-site, unit-by-unit basis*".[141]

In view of the above, it is important for boards to engage with and secure support for decarbonisation efforts from leading shareholders, whether institutional investors, family controllers, or the government. Strong and unequivocal backing from them can influence the ambition and pace of these efforts.

For Southeast Asian companies with a global shareholder base, more frequent and more extensive enquiries from Western institutional investors about climate action have signalled to boards and management that they must devote more attention to this area. ClientEarth and the Asia Investor Group on Climate Change have published and launched a guide supporting responsible stewardship, following on from global trends of shareholder engagement on climate and in view of the fiduciary duties of institutional investors.[142] It features leading corporate lawyers from 11 jurisdictions in Asia who provide analysis on the framework for shareholder climate resolutions in Japan, Korea, India, Indonesia, Malaysia, Singapore, China, Hong Kong, the Philippines, Thailand and Vietnam.

B. REGULATORY GUIDELINES SHAPING SHAREHOLDER INVOLVEMENT

Recent developments in Asia indicate regulators' growing support for shareholder proposals and stewardship activities by asset managers. For instance, the Monetary Authority of Singapore announced in December 2020 its Environmental Risk Management Guidelines for Banks,[143] Insurers,[144] and Asset Managers.[145] While this guideline is not obligatory, it sets out best-practice standards and will factor into MAS' overall risk assessment of a financial institution and in turn the corporate investee. In particular, asset managers are expected to exercise sound stewardship to help shape the corporate behaviour of investee companies positively through engagement, proxy voting and sector collaboration. This includes supporting investee companies' efforts in the transition towards more sustainable business practices while maintaining risk management standards. This signals a strong intent from MAS towards taking into account environmental risk management in their ordinary course of business (which for asset managers, would include exercising sound stewardship in respect of the companies in which they invest).[146]

In Japan, the Financial Services Agency updated their Stewardship Code in 2020.[147] The code outlines expectations for financial institutions to disclose their voting records and recommends institutional investors to disclose how institutional investors integrate sustainability in their strategy. As of 30 June 2024, there were 334 institutional investors in the list who have accepted the code.[148]

In India, the Securities and Exchange Board established regulatory requirements for ESG fund's portfolio as well as for stewardship activities in July 2023.[149] The new requirements will ask for an ESG fund's assets under management to be invested at least 80% in line with their ESG strategy. They will be applicable from 1 October 2024, and those that are not in compliance will have to ensure compliance by 30 September 2025, during which they cannot undertake fresh investments "without assurance on BRSR Core".[150] The Business Responsibility and Sustainability Reporting or BRSR is India's sustainability reporting framework. BRSR core is a sub-set of BRSR, consisting of metrics under 9 key ESG attributes.

These regulatory developments are likely to shape the engagement strategies of institutional investors of Southeast Asian companies. Particularly for Southeast Asian companies with a global shareholder base, regulatory support for more robust engagement could motivate more frequent engagement by Western institutional investors on climate action, signalling to boards and management that they must devote more attention to this area.

C. CORPORATE CLIMATE STRATEGY FOR FAMILY-OWNED FIRMS IN SOUTHEAST ASIA

Whilst the role of institutional investors dominates the discussion on investment stewardship, the economic reality of Southeast Asia is that 85% of businesses are family owned.[151] Corporate climate strategy for these businesses will therefore require support from these owners.

It has been argued that the long-term threats posed by climate change should be of intrinsic interest to family-owned firms since these owners tend to think in terms of "generations." However, feedback from stakeholders surveyed for this Guide in off-the-record interviews indicates mixed views. According to one Southeast Asian sustainability adviser, "Some families say they are thinking in generational terms, but they do not at all. Sadly, most boards and most families, including the new generation, still adopt short term thinking." A Singapore-based academic observes that, "Larger family-owned firms that have existed for multiple generations can think more long-term. For first generation firms, many think only about survival."

Similarly, a Southeast Asian executive compensation consultant noted that "larger family firms – such as CDL, Ayala and Berjaya – see climate action as a differentiator and a way to safeguard the long-term viability of their enterprises." For example, Ayala is a company with a nearly 200-year-old history that is closely tied to that of the Philippines. Internal and external observers have noted that there is a strong sense of responsibility to the country and society within Ayala's controlling family as what will benefit the country —including taking ambitious steps to combat climate change and its increasingly dire consequences—will also benefit the company.

Securing the support of controlling family shareholders can yield significant tangible benefits. According to a corporate governance expert who has worked extensively in Southeast Asia, "In this region, the influence of the family is quite big. If you don't convince the patriarch, nothing will get done. But once it's supported by the family, it's implemented, and it's implemented fast." Similarly, the Centre for Asian Philanthropy and Society (CAPS) noted that "for many [Asian] firms, the role of the family is critical in shaping corporate strategies and their commitment to sustainability."[152]

In interviews conducted, we encountered owners that displayed a strong sustainability commitment. At a large Southeast Asian jewellery firm that has made a net-zero pledge in line with limiting global warming to 1.5C and is actively involved in the UN Global Compact, the company's high ambition on climate action is rooted in its founder's belief that "the world belongs to all of us and that we should treat each other equally." According to the founder, beyond paying good wages and equipping workers with suitable skills, the company must also take care of the environment—"we can't pollute the air or water because the workers will then see our hypocrisy."

Interviews with stakeholders also revealed different "origin stories" for controlling shareholders' embrace of sustainability and climate action. In many cases, it is the realisation that climate change not only creates existential risks but opens up attractive opportunities as well. At some family-owned companies, there is a deeper and more personal motivation. For instance, the founder of the above-mentioned jewellery firm recalled being inspired by former United Nations Secretary General Kofi Annan when he introduced the UN Global Compact on human rights, labour, and environment in 1999 and this led to an interest in sustainability that grew over the years. For the octogenarian founder of a large Hong Kong-based apparel maker that has been a perennial sustainability leader in its sector, watching Al Gore's *An Inconvenient Truth* documentary was the seminal moment that led him to "want to change the world and help the planet."

7. EVOLVING DEVELOPMENTS

To position their businesses for success, directors in the region would be well placed to keep apprised of, and navigate, the emerging legal and financial trends in the region. The realities of the global economy mean that international developments can be legally and economically relevant across borders. A 21st century director must therefore be aware of relevant international trends, a few of which are highlighted in this section.

A. IMPACT OF THE CARBON BORDER ADJUSTMENT MECHANISM

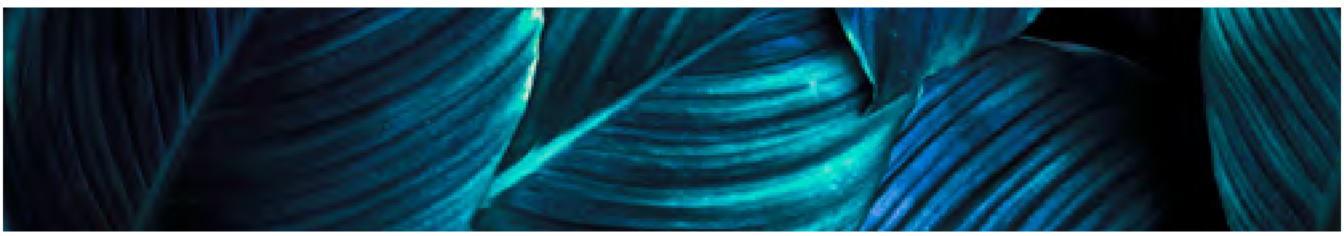
The EU's carbon border adjustment mechanism (CBAM), which was launched on 1 October 2023 and will become fully operational in 2026, is likely to significantly affect Southeast Asian exports to Europe. At a basic level, the CBAM's objective is to put a fair price on the carbon emitted during the production of carbon intensive goods which enter the EU, and to encourage cleaner industrial production in non-EU countries.[153] It will impose an additional cost on imports from countries that are not subject to a carbon price. Such cost is meant to be commensurate with what the carbon price would have been had the goods been produced in the EU, addressing the issue of carbon leakage, and harmonising the EU's domestic carbon pricing policy with that of its imports.[154]

The CBAM does not cover all goods; it will apply initially to six sectors, namely aluminium, cement, electricity, fertilisers, hydrogen, and iron/steel. In this respect, Indonesia, Malaysia, and Vietnam are likely to be most impacted by the CBAM.[155] With the EU being the third-largest export market for ASEAN goods, and with trade accounting for 40-50% of ASEAN's GDP between 2012 and 2021,[156] the CBAM can have significant impact on making trade more costly or even generate losses for Southeast Asian companies. This is particularly so for exports to Europe that have a high carbon intensity which risk the most exposure. However, it is conceivable that the CBAM's coverage will extend to more products in the future to fulfil the Paris Agreement's goals.

Given the above circumstances, we will likely see the strengthening of national climate-related regulations, including through carbon pricing policies, in line with the global direction of travel. Currently, Singapore and Indonesia are the only countries with a national carbon pricing scheme (although the implementation of Indonesia's scheme has been delayed). Thailand will implement a carbon tax on oil products from 2025.[157] The combined impact that increased regulation and the CBAM will have on Southeast Asian companies could be significant. It will not only impact exports to Europe but goods that are generally carbon intensive. Directors would therefore be well placed to begin ensuring appropriate internal policies are in place to account for the carbon footprint of their goods. This would help ensure that corporations are well prepared by the time the regulations are implemented, minimising "shocks" from regulatory changes.

B. CS3D AND BUSINESS AND HUMAN RIGHTS

A major and potentially game-changing development that will affect companies operating in Southeast Asia is the EU's Directive on corporate sustainability due diligence (CS3D), effective as of 25 July 2024. EU Member States have two years to incorporate ('transpose') the CS3D into national laws and will start applying the new rules to companies as of July 2027. The CS3D aims to foster sustainable and responsible corporate behaviour in companies' operations and across their global value chains.[158] The new rules will ensure that companies identify and address adverse human rights and environmental impacts of their actions inside and outside Europe.[159]



The CS3D establishes a corporate due diligence duty. The core elements of this duty are identifying, preventing and addressing potential and actual adverse human rights and environmental impacts in the company's own operations, their subsidiaries and, where related to their value chain(s), those of their business partners.[160] The two types of situations covered by the CS3D in which human rights and adverse environmental impacts interact are:

- Environmental degradation or other impact on natural resources that negatively affect the enjoyment of the right to food, water and sanitation, health, safety, land, and property as well as ecosystem services supporting human wellbeing;[161] and
- Environmental impacts that occur where eviction, land grabbing or natural resource appropriation negatively affect the rights of individuals, groups, and communities, specifically the right to self-determination, culture, and adequate standard of living[162]

Companies subject to the CS3D are also required to conduct due diligence over environmental impacts that do not have direct human rights implications. These impacts are defined by reference to prohibitions and obligations derived from certain international environmental instruments such as the Convention on Biological Diversity, World Heritage Convention, Ramsar Convention, etc.[163]

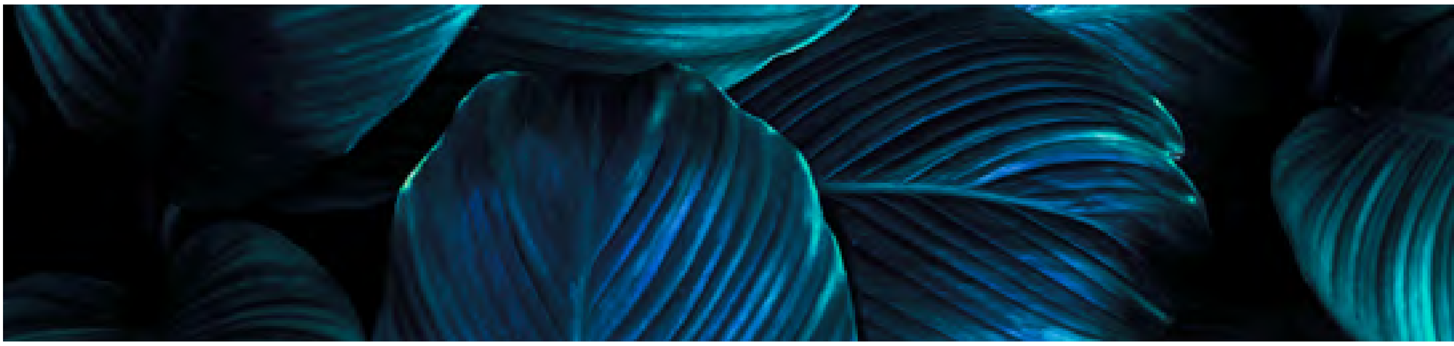
The CS3D essentially puts the international standard on business and human rights into mandatory legal requirements, following a number of EU countries adopting similar national laws and alongside ongoing discussions at the international level on a binding business and human rights treaty.[164]

The 2011 UN Guiding Principles on Business and Human Rights (UNGPs) set out this international standard and call upon businesses to respect human rights by implementing human rights due diligence.

This entails (i) avoiding infringing on the human rights of others, and (ii) addressing human rights impacts with which they are involved.[165] While the UNGPs are not legally binding, they are the authoritative global standard and are widely respected – the OECD Guidelines for Multinational Enterprises incorporate the UNGPs, and the International Finance Corporation has incorporated elements of the UNGPs into its performance standards.[166] It is therefore unsurprising that "companies are increasingly adopting human rights policy commitments and starting to embed them across all functions."[167]

With the UN General Assembly's recognition of the right to a clean, healthy and sustainable environment as a human right[168] and the UN Working Group on Business and Human Rights' recognition that the corporate responsibility to respect human rights extends to the human rights impacts of climate change and other environmental harms,[169] it is essential that companies consider their effects on the environment whilst assessing their human rights impacts. This is becoming increasingly relevant in Southeast Asia, with an ASEAN Draft Declaration on Environmental Rights being recently released for stakeholder consultation.[170]

For directors, the UNGPs provide the tried and tested management framework for credibly addressing environmental and human rights impacts, issues which companies have historically struggled to manage, and which crystallise in scandals and litigation. Directors are well-advised to implement the UNGPs in their business, in order to be best positioned for incoming EU legislation, to manage their own risks, to meet evolving expectations and to compete for customer demand and investment. Where UNGP policies are already in place, they should enquire whether these policies consider environmental impacts.[171]



REPORT BY THE PHILIPPINE COMMISSION ON HUMAN RIGHTS (2022)

Greenpeace Southeast Asia, Philippine Rural Reconstruction Movement and other entities petitioned the Commission on Human Rights of the Philippines ("CHRP"), urging it to enquire into the responsibility of 47[172] of the world's largest fossil fuel producers (the "carbon majors") for human rights violations resulting from climate change. The Petitioners, among other things, argued that private enterprises, and not only States, are obligated to respect human rights.

In May 2022, the CHRP, after a seven-year investigation, issued its report with various factual findings and recommendations. The CHRP found that the carbon majors had "directly by themselves or indirectly through others...engaged in wilful obfuscation of climate science" and noted that this climate change denial "still persists." Applying the UNGPs, the CHRP stated that the corporate responsibility to respect human rights includes "the responsibility to avoid causing or contributing to adverse human rights impacts through harm to the environment and our climate system." It went on to state that the carbon majors "must conduct due diligence...in accordance with the UNGPs in all stages of their operations and across all their value chains, even if not required by government regulations in the jurisdictions that they operate in." The CHRP also urged the carbon majors to desist from all activities that undermine climate science, and publish "specific business plans about intended emissions reduction, decarbonization and transition to a low-carbon economy."

The CHRP's report, though non-binding, is a significant development because petitioners in subsequent proceedings, especially in the Philippines, may rely on it as the basis for legal claims.

C. TAKING ADVANTAGE OF CLIMATE FINANCE

One of the largest sticking points for the green transition is funding, particularly in developing economies.[173] Indeed, a 2023 report by the International Finance Corporation (IFC) and IEA states that Southeast Asia will require US$171-185 billion in investments a year from 2026-2030 to align with sustainable development and climate goals.[174] To achieve this, some of the mechanisms, instruments, and products that are helping to mobilise domestic and foreign private sector capital, and protect companies from climate-related risk, are as follows:

Green bonds and loans	Green bonds are a form of financing in which the issuer commits to use the proceeds to fund projects that have positive climate and environmental impacts (a 'use-of-proceeds' approach). Green bonds are one of the most prevalent types of climate-related bonds and constitute 80% of climate-related bond issuances in emerging markets and developing economies (EMDEs).[175] There is significant room for growth of green bonds and loans. Green Sukuk Islamic bonds, which were first launched by Malaysia in 2017 to finance green projects, have seen issuances in a few countries over the past few years, including Indonesia. In addition, similar to green bonds, green loans, which are typically conducted via private transactions and are often smaller in size for each transaction than green bonds, are used to raise capital for eligible green projects.
Sustainability-linked bonds (SLBs) and sustainability-linked loans (SLLs)	Issuers use SLBs to raise capital by committing to achieve predefined key performance indicators (KPIs) on sustainability.[176] Unlike green bonds, SLBs do not have a use-of-proceeds restriction, and the capital raised can be used for general purposes. Typically, a higher interest rate ("step-up") will be triggered for the SLB or SLL if the agreed sustainability KPIs are not met within a set timeframe and, less commonly, a lower interest rate ("step-down") if the KPIs are achieved or exceeded.[177] For example, an energy company may raise capital by issuing an SLB and committing to reduce the usage of fossil fuels by a certain

	percentage in its power generation fleet over the next five years. SLLs are capital intermediated through banks and are similar in concept to SLBs. Whilst these financial instruments are highly innovative and potentially transformative in the context of the green transition, they have proven vulnerable to transition-washing risks for various reasons including the lack of binding standards or rules in the market, the dearth of ambitious underlying transition plans and strategies and a lack of rigour in second party verification exercises, amongst others.[178]
Transition-labelled bonds and loans	Transition-labelled finance (i.e. transition-labelled bonds and loans) are instruments with specified uses of proceeds tied to particular projects or activities for an entity to transition its economic or business activities to a state of net-zero greenhouse gas emissions. Pre-transaction, fundraisers will typically obtain verification of their transition strategies, and alignment of the proposed uses of proceeds with such strategies. Post-transaction, fundraisers will typically prepare a periodic allocation report on the uses of proceeds, verified by an external reviewer. They may also prepare impact reports. Similar to the risks outlined above for SLBs and SLLs, transition-labelled finance has been prone to transition-washing risks. In addition to the reasons presented for SLBs and SLLs above, other concerns include the lack of requirements to benchmark transition plans and strategies against scientifically robust, Paris-aligned transition pathways, as well as a lack of incentives for firms to transition their whole business including Scope 3 emissions.[179]
Public-private funding	Project-based funding that blends public finance with private sector capital can be useful to de-risk investments in infrastructure projects that have a positive climate impact. The public sector can reduce investment costs, including by establishing public-private partnerships to jointly undertake infrastructure projects. This can bring down the total cost of borrowing to allow the private sector to make more climate-positive investment decisions. The public sector can also provide expertise to help with better project evaluation, and thereby improve project selection. Multilateral development banks and philanthropic capital can also play a similar role to the public sector in providing finance for such projects. Philanthropic capital could be especially appropriate and effective in Southeast Asia.[180]
Climate-related funds and private equity	This refers to the broad class of equity investments into companies, organisations, or projects to generate positive climate and environmental impacts alongside financial returns. There remains large room for growth for climate-labelled funds within Southeast Asia's climate finance ecosystem. The IMF posits that, if Asia's share of global ESG funds were to rise to the region's share of overall funds – that is, about 10% of global assets – this would generate about US$500 billion per year in inflows to the region.[181] With the right supportive framework, such as robust ESG rating methodologies and corporate disclosures, companies may well tap into such equity markets for their operations and projects and reduce financing costs for those that have high climate scores. Equally, venture capital and private equity are increasingly investing in solutions aimed at addressing climate change challenges. These include renewable energy, 'greening'[182] carbon-intensive sectors, and sustainable transportation.[183] Such forms of financing may be particularly suited for Southeast Asia's profile of small- to medium-sized private enterprises engaged in innovation and technological advancement.

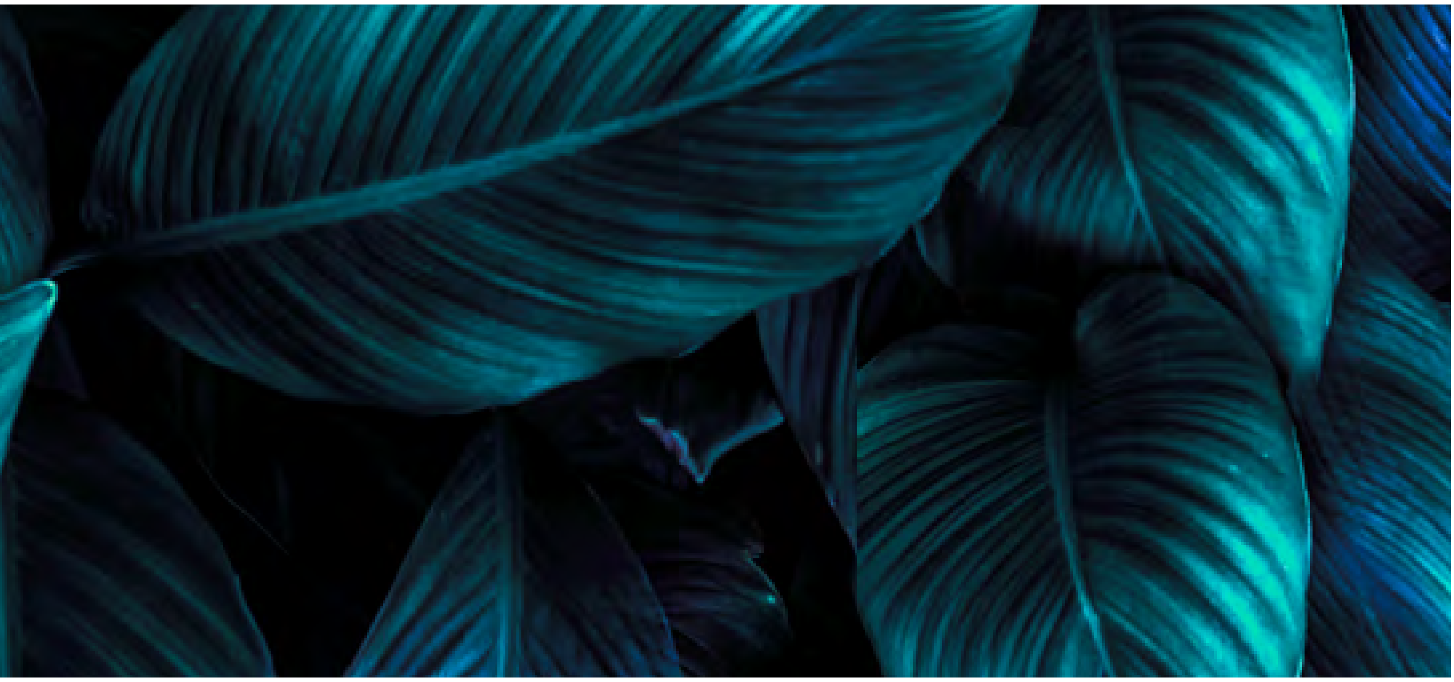
Climate risk insurance	Insurance against climate-related risks is a critical way of protecting one's business. Given Southeast Asia's acute vulnerability to the physical risks of climate change, proper coverage of companies and their operations in the region is needed to ride out volatility, protect against disruptions to supply chains and assets, and manage the increasing risk of stranded assets and the transition to a low carbon economy. At the same time, as projects that support such an economy grow, insurance can help to de-risk such projects and free up capital and/or make these projects more bankable.[184] As the region aims to narrow the protection gap on climate-related risks and the net zero transition, this presents opportunities not only for insurers but for real economy companies to build resilience in their businesses and communities. This would allow them to protect against the economic losses of climate change, whilst capitalising fully on the opportunities of the net zero transition.

Main Source: Anathakrishnan Prasad et al, 'Mobilizing Private Climate Financing in Emerging Market and Developing Economies' (IMF eLibrary Jul 2022)[185]

As climate and sustainable finance in the region continues to gain pace, it is important to bear in mind the standards, principles, and taxonomies that are being promulgated to guide the use of such finance. These guidelines help to ensure trust and accountability is fostered in such financing mechanisms and instruments.

One example is the ASEAN Taxonomy for Sustainable Finance , which was first released in November 2021, with subsequent versions issued in June 2023 and April 2024.[186] The ASEAN Taxonomy is designed to be an "overarching guide for all ASEAN member states" and to complement national sustainability initiatives.[187] To accommodate the economically diverse ASEAN membership, the Taxonomy contains a "Foundation Framework" for governments and companies that are beginning their sustainability journey and a more advanced "Plus Standard" for entities seeking to meet more rigorous environmental requirements.[188] For the latter category, specific metrics and thresholds will be developed for six "focus" sectors and three "enabling" sectors.[189]

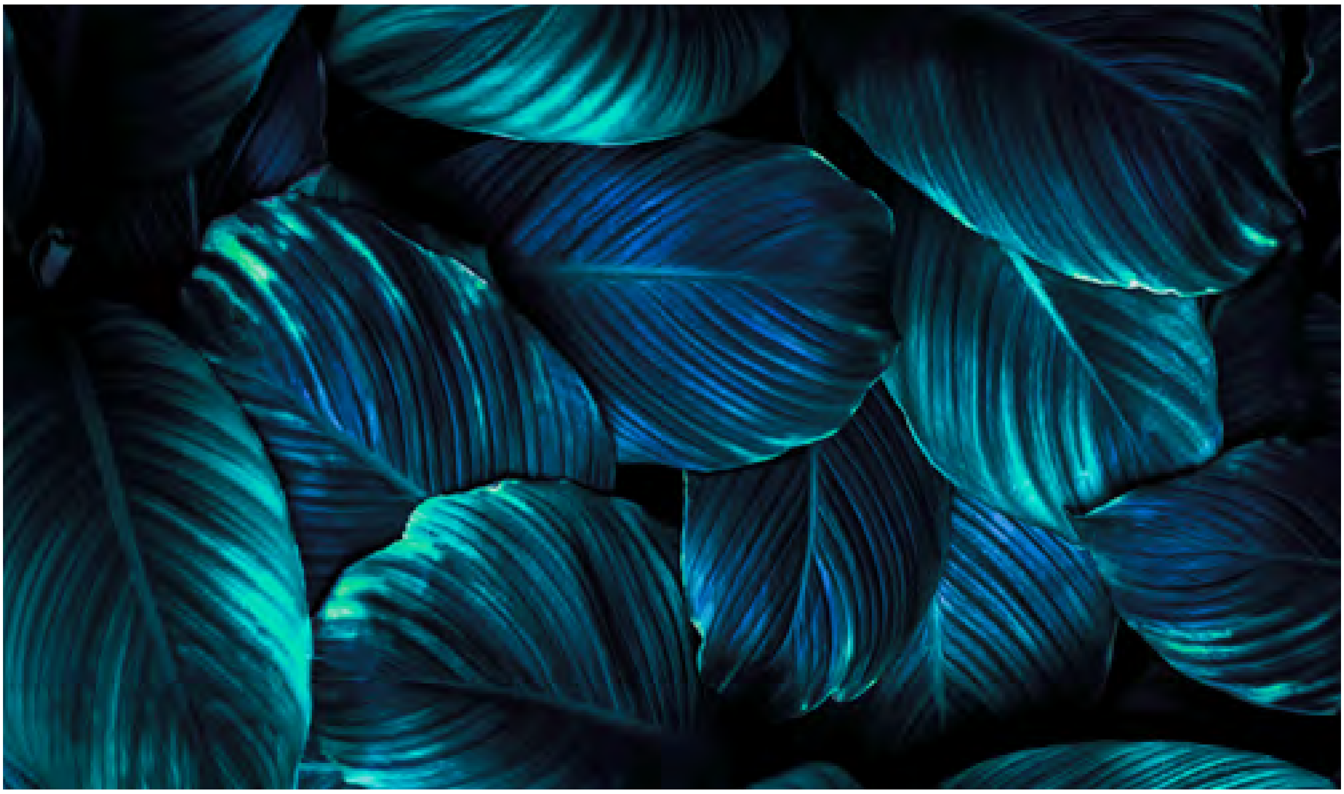
As a classification system that provides clarity on which activities are considered "sustainable"—that is, contributing to one of four environmental objectives[190] while meeting specified environmental and social safeguards—the ASEAN Taxonomy can help increase the levels of sustainable investment and financing. Moreover, amidst the varying legal and financial systems across the ASEAN member states, the ASEAN Taxonomy helps provide a common language with a set of common principles and definitions on sustainable finance. This facilitates climate positive activity within the region, helping ensure interoperability and minimise greenwashing.



At the international level (and in Japan), a number of instrument-level voluntary standards have been produced applicable to labelled sustainable finance bonds and loans which aim to improve the reputation and effectiveness of these markets in the context of the transition. For instance, the EU has developed the "EU Green Bond Standard" as a voluntary gold standard for issuers who follow a set of specific criteria, including using at least 85% of their proceeds in economic activities aligned with the EU Taxonomy.[191] However, markets for sustainability-linked and transition-labelled instruments, in particular, continue to be associated with transition-washing associations. In order to guide policymakers seeking to plug the global regulatory gap in climate transition financing and tackle the rise of transition-washing, ClientEarth has recently published a paper setting out a series of recommendations for the establishment of national-level policy and regulatory frameworks that can unlock the power of labelled transition finance markets to catalyse the net zero transition.[192]

In October 2024, ClientEarth filed a greenwashing complaint with the French financial regulator (the 'Autorité des marchés financiers'[193]) against the investment company BlackRock (the world's largest asset management company with US$11.5 trillion assets under management.[194]) Building on analysis from French organisation Reclaim Finance,[195] ClientEarth identified 18 actively managed retail investment funds marketed in France with 'sustainable' in their names, which collectively hold more than US$1 billion of fossil fuel investment, the majority of which represents fossil fuel expansion. These include investments in fossil fuel companies such as TotalEnergies, Shell, Chevron, Conoco Phillips, Equinor and British Petroleum Company.[196]

The complaint may prompt enforcement by the Autorité des marchés financiers aimed at ensuring that investment funds labelled 'sustainable' are in fact sustainable (particularly as regards investment in fossil fuel sector activity which is demonstrably inconsistent with the Paris Agreement goals). As a result of enforcement, BlackRock could be required to either change the language it uses when marketing its investments, or to reallocate its 'sustainable' fund portfolios so that its investments are consistent with how it presents these funds to the public; outcomes which are relevant to investment managers and regulators around the world, wherever similar rules apply regarding the marketing of funds as 'sustainable'.[197] There is regulatory momentum here: the European Securities and Markets Authority (ESMA) recently released guidelines which will require investment funds with 'sustainable' or 'ESG' terms in their names to meet certain criteria, including fossil fuel exclusions derived from EU regulation.[198] These developments are likely to be followed closely in Asia. Directors can expect greater regulatory scrutiny on the sustainability credentials of investment funds, and on the phenomenon of greenwashing more generally. They should take due care in the selection of appropriate sources of climate finance and investment products.



8. INTEGRATING CLIMATE INTO THE BOARDROOM

The previous sections laid out the requirements for corporations, steered by their directors, to integrate climate change into their decision making, and the associated legal risks if they fail to do so. This section focuses on practical ways that boards can demonstrate climate leadership, particularly in view of the legal obligations that they have in respect of climate change. This section also references good practices which have been identified at Southeast Asian corporations.[199] It will consider:

a. How the company can be structured for effective climate action; and
b. Areas that boards could focus on for corporate climate transition, and tools to achieve this.

It suggests the following action points that boards should implement:

1. Formally charging the board with overseeing sustainability.
2. Incorporating sustainability into the organisational structure.
3. Securing the support of controlling shareholders.
4. Ensuring knowledge and competence.
5. Measuring the company's carbon footprint.
6. Assessing climate risks and opportunities.
7. Setting science-based climate goals and a transition plan.
8. Ensuring alignment within the organisation and its value chain.
9. Leveraging available tools to ensure steady progress.

Generally speaking, it would be prudent to adopt these action points as part of good corporate governance on climate action – both in order to minimise the legal risks that corporations and boards could be exposed to, and also as a matter of compliance with legal requirements in relevant reporting obligations and sustainability frameworks. For instance, mandatory disclosures would require an accurate assessment of a company's carbon footprint and an assessment of climate-related risks and opportunities, while the legal obligation for directors to manage climate-related risks by integrating them into their corporate strategies could reasonably require the setting of science-based climate goals and a transition plan, and ensuring alignment within the organisation and its value chain. Furthermore, as previously mentioned, to the extent that a corporation is liable in a validly brought climate lawsuit, directors may also face personal liability for failing to act reasonably in steering the corporation to meet foreseeable climate risks.

The exact nature of the steps that directors will need to take will depend on the specific legal obligations of each Southeast Asian jurisdiction and the particular industry of that corporation, and an in-depth analysis per jurisdiction and per industry is beyond the bounds of this Guide.[200] Rather, this section of the Guide seeks to set out practical ways that boards can exercise good climate leadership. This section also draws on off-the-record interviews with nearly two dozen board directors, corporate executives, sustainability specialists, institutional investors, financial and management advisers, and researchers/analysts in the Asia-Pacific (with a particular focus on Indonesia, Malaysia, the Philippines, Singapore, and Thailand) to understand how large businesses in Southeast Asia have responded to the challenge of climate change. It also draws on insights from Earth on Board's extensive experience training boards of directors to understand their fiduciary duties in relation to sustainability trends, and insights from Climate Governance Malaysia's capacity building work supporting the role that corporate boards should play in driving sustainability.

Given that the particular legal obligations and regulatory structures that each corporation and board has to navigate is unique to that corporation's jurisdiction and industry, the examples of corporate sustainability strategies contained in this section are meant for informational purposes only, and are not an endorsement of a particular strategy or company.[201] Rather, it is hoped that directors reading this Guide will draw insights from the examples and anecdotal accounts of interviewees as they consider the corporate sustainability strategies and transition plans that are appropriate for their own companies. Notably, all of the individuals that were interviewed for this Guide agree that more effort on climate action is required by boards.[202]

A. STRUCTURING THE COMPANY FOR EFFECTIVE CLIMATE ACTION

Formally charging boards with overseeing sustainability

As elaborated in Section 3 above, directors have legal duties with respect to climate change. To ensure that climate action is prioritised and to signal its importance internally and externally, the board should be explicitly charged with overseeing climate action to reflect these legal obligations. While the absence of such an explicit mandate will not excuse boards from their legal duties to consider climate-related risks to the company, an explicit mandate can be helpful to set a clear direction for the organisation, internally and to external stakeholders. The World Economic Forum's guiding principles on *Effective Climate Governance on Corporate Boards*[203] highlight that such an explicit mandate is a critical component of effective board leadership on climate action.

According to a 2023 study of the 100 largest listed companies in Malaysia and Singapore (50 in each country) (2023 Malaysia-Singapore Survey), 87% have "formally embedded sustainability governance into the responsibilities of the board or board committees."[204] By way of comparison, a 2022 analysis by sustainability NGO Ceres found that 92% of US S&P 100 boards have a clear sustainability mandate.[205]

At Southeast Asian bank CIMB, "overseeing the development and implementation of a sustainability framework for the company" is one of the board's seven principal responsibilities. Correspondingly, the Group Sustainability and Governance Committee supports the board in fulfilling its responsibilities by "providing oversight, advice and direction in the development, implementation and monitoring of the strategies, framework, and policies with respect to…sustainability …and climate change."[206]

At Ayala Corporation, concurrent with its pledge in 2021 to achieve net zero by 2050, the board charter was amended to explicitly task the board of directors with responsibility "for overseeing the proper monitoring and management of climate-related risks and opportunities and other sustainability-related concerns" (see Box 2 below) and a sustainability committee was established to support the board of directors.

> The Board is responsible for promoting and adhering to the principles and best practices of corporate governance, for frostering the long-term success of the Corporation, for overseeing the proper monitoring and management of climate-related risks and opportunities and other sustainability-related concerns and for securing its sustained competitiveness in the global environment in a manner consistent with its fiduciary responsibility.

Box 2: Ayala Corporation's board of directors' mandate [207]

Some board charters provide even more specific mandates on climate action. At consumer goods conglomerate Unilever, the 2023 Board Rules[208] state that the board of directors is exclusively charged with the "endorsement or amendment of Unilever's Climate Transition Action Plan" (CTAP). The Rules further allocate responsibility to the Audit Committee to oversee the external assurance process for certain CTAP key performance indicators (KPIs) and to the Corporate Responsibility Committee to regularly review the CTAP, "including whether it remains current and the progress towards meeting targets."

Incorporating sustainability into the organisational structure

Sustainability committees in Southeast Asia's companies

Corporate boards across the globe adopt different structures to oversee sustainability matters, with some assigning it to the full board while others delegate it to one or more board committees, including a stand-alone sustainability committee. The Climate Governance Initiative (CGI) recommends that sustainability should be embedded into all board committees. Further, there should be discrete sustainability governance structures for businesses, particularly those that are vulnerable to climate risks.[209]

In Southeast Asia, the 2023 Malaysia-Singapore Survey mentioned above found that 11% of companies had a stand-alone board-level sustainability committee, with another 13% featuring a board-level committee that is tasked to oversee sustainability as well as other matters, such as safety and risk.[210]

At the Philippines' SM Prime Holdings, the board-level Corporate Governance Committee is charged with the handling of sustainability matters, including ensuring that sustainability is integrated into the board's decision-making processes and reviewing the company's sustainability roadmap and progress made against it. The Corporate Governance Committee, which is composed of independent directors, is supported by the management-level Sustainability Council, led by SM Prime's President.[211] At Indonesia's GoTo Group, the Audit Committee oversees the company's sustainability activities on behalf of the board of commissioners.[212]

According to the 2024 ASEAN Board Trends survey, 45% of respondents stated that their board will establish a board-level ESG or sustainability committee in the next year to provide more effective oversight. Interviews with Southeast Asia-based directors and executives revealed the substantial benefits that a dedicated sustainability committee can bring, particularly given the increasing complexity and granularity of climate action. According to the sustainability committee chair of a Southeast Asian transportation company, establishing a dedicated sustainability committee has enabled broader and deeper discussions on sustainability. The chair explained that, in quarterly sustainability committee meetings, "we can now –delve into the particularities of such issues as Scope 3 emissions and internal carbon price."

Similarly, the Chief Sustainability Officer of an ASEAN bank noted that the establishment of a board-level sustainability committee enabled "a lot more focused discussions, a lot more time debating the really important issues. Otherwise, you just don't have enough time, and these issues are very complex, such as our transition pathways to net zero and the fine balance between pursuing net zero while supporting national development."

A stand-alone sustainability committee can also provide needed resources and longer-term continuity because a company's climate transition is an ongoing process spanning decades, and roadmaps and implementation plans adopted today will inevitably require review and updating down the road. According to the CGI's case study of Hong Kong-based energy provider CLP, the sustainability committee plays an important role in scrutinising periodic updates of decarbonisation targets and ensuring they are aligned with the company's long-term vision.[213]

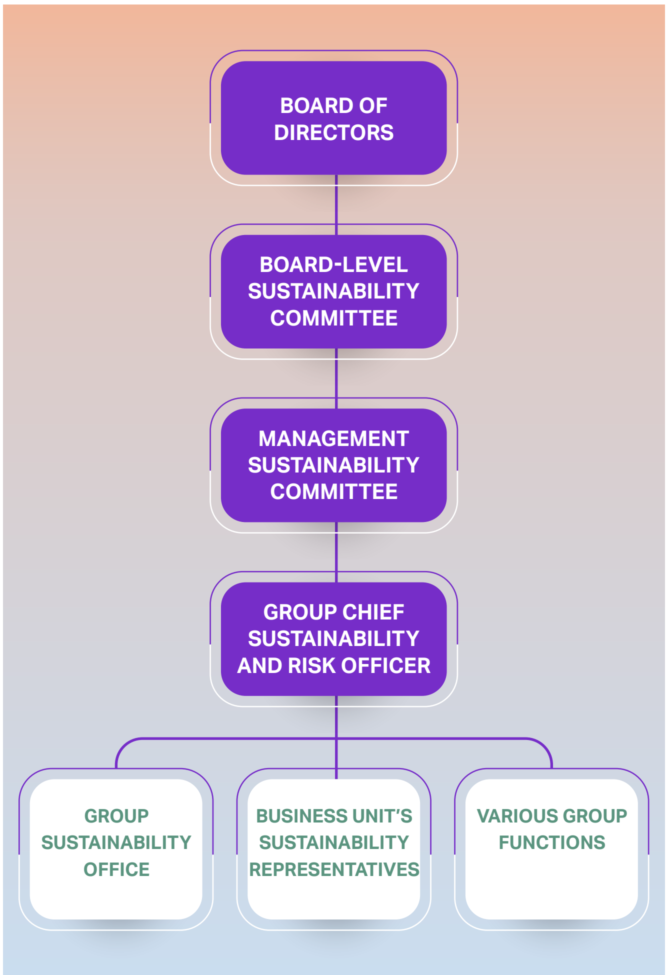
The need to avoid a "sustainability silo"

National University of Singapore (NUS) professor Mak Yuen Teen cautions that boards with a stand-alone sustainability committee should "ensure that sustainability is not something that is simply tasked to a single board committee through a 'silo' approach, rather than fully integrated into the work of the board and other board committees."[214]

Singapore-listed ComfortDelGro has stated that, whilst "our Sustainability Committee is responsible for maintaining oversight of ComfortDelGro's sustainability ambitions, strategies and performance, including climate-related risks and opportunities…decisions to mitigate, transfer and control ComfortDelGro's climate-related risks are managed by the Audit and Risk Committee that works closely with the Sustainability Committee."[215] Similarly, at Ayala, the Risk Management and Related Party Transactions Committee supports the board and Sustainability Committee by ensuring "an active management oversight of sustainability efforts and climate-related risks and opportunities."[216]

Besides organising themselves to effectively oversee their company's climate transition, boards should ensure that a robust governance structure for sustainability exists at the management level. For instance, insurer AIA – whose net-zero targets have been validated by SBTi – has established a management-level Climate & Net Zero Steering Committee to oversee the fulfilment of its net-zero pledge.[217]

At ComfortDelGro, the board-level Sustainability Committee is supported by the Management Sustainability Committee (MSC) chaired by the group CEO. The MSC, composed of senior executives and heads of key business units, reviews and assesses the company's sustainability performance against board-approved targets. In addition, the Group Sustainability Office, led by the Chief Sustainability and Risk Officer, is responsible for managing relevant climate risks and opportunities.[218]



Box 3: ComfortDelGro sustainability governance structure

In the 2023 Malaysia-Singapore Survey, NUS Professor Mak Yuen Teen found that that 86% of Malaysia's and 70% of Singapore's largest companies featured a management-level committee focusing on environmental and climate issues.[219] Sustainability governance structures are sometimes established first at management level and subsequently at board level. For example, CIMB formed a management-level Sustainability Council in late 2018, established a Group Sustainability Division and appointed a Group CSO in 2020, and formed a board-level Group Sustainability and Governance Committee in 2021.

Generally, the optimum organisational structure depends on the state of progress on sustainability that the company is at. Some companies are advanced enough to have sustainability already incorporated at the level of the board. Broadly speaking, Earth on Board recommends that the best methodology is to have a sustainability committee coupled with another committee, such as a strategy committee. This would ensure that the sustainability committee is not silo-d and cannot be sidelined.

In addition, Earth on Board recommends that the sustainability committee should have a structured mandatory meeting at least once a year with two other committees fundamental to the running of the company. For instance, this form of engagement with the risk management committee would ensure that the way risks are analysed takes into consideration systemic disruptions and the interaction between risks of different origins, and the effect as between different risks on the company. Further, ongoing double materiality assessments of risk will allow interactions with stakeholders to be an area of progress and transparency. Another example would be engagement with the human resource committee. This would ensure that the process of recruitment, promotion, performance evaluation and consequent variable remuneration takes into consideration sustainability criteria.

Securing the support of controlling shareholders

To better discharge their legal obligations and position the corporation for robust climate action, it is important for boards to secure support from leading shareholders, whether institutional investors, family controllers, or the government. Strong and unequivocal backing from leading shareholders can influence the ambition and pace of decarbonisation efforts. With 85% of businesses in the Asia-Pacific owned by families[220] and with some others featuring the state as a major shareholder, the board's leadership on climate action would be facilitated by support from these shareholders.

Government shareholders can act as leaders for the rest of the economy, with respect to corporate climate strategy. Several interviewees mentioned Singapore's Temasek as an owner that espouses a "stewardship" mindset and "doesn't try to get every buck you can," and views protecting the planet as part of its mission. An International Finance Corporation official has noted that, with respect to Indonesia, "state-owned enterprises have more wiggle room than private companies because climate action is now a priority of the government, particularly in sectors such as energy and infrastructure."

Ensuring knowledge and competence

Equipping boards for climate-related decision-making

As previous sections highlighted, directors have a legal duty of competence. A component of competence is adequate knowledge and continuous upskilling. The climate and sustainability-related knowledge and experience required of effective boards is substantial and should not be under-estimated. As a Singapore-based independent director puts it, "If you, as a board director, don't understand climate change issues, how can you ask the right questions to get management to where it needs to be?"

Boards—and board committees charged with providing support on sustainability – need to possess a high degree of competence and comfort on sustainability issues because they must increasingly grapple with complex and challenging issues, including trade-offs between shorter- and longer-term financial returns and taking into account corporate and societal objectives. Boards of directors of high-emitting corporations would particularly be expected to be very well informed on this topic and to carefully consider the carbon impact of business decisions, to navigate the various legal risks detailed in section 3.

Encouragingly, in interviews undertaken for this section of the Guide, it was noted that some board directors who are not sustainability experts do take the initiative to strengthen their knowledge on sustainability matters. The CSO of an ASEAN bank shared that "some directors would actually say 'I don't know what this means, tell me what that means' and ask for specific half day sessions with management to really understand how we do things, what are these concepts, and so forth."

Recent studies show that the climate-related knowledge and experience possessed by directors are not yet sufficient. In the 2023 WTW-Nasdaq survey of 349 board directors from 44 countries, 48% of respondents felt that their boards lacked the skills and expertise to address climate risks and opportunities.[221] Similarly, the 2024 ASEAN Board Trends report[222] revealed that 58% of director respondents felt their boards needed more training on "sustainability, climate change and ESG."

Recognising the importance of equipping directors with relevant knowledge to effectively oversee sustainability matters, the Singapore Exchange (SGX) now requires the directors of listed companies to attend a pre-approved sustainability training course.[223] SGX reasons that "changes and disruptions due to environmental, social and governance developments are already underway [and] company directors must therefore have a good grasp of sustainability issues."[224] Earth on Board jointly with the Cambridge Institute for Sustainability Leadership (CISL) are two of the entities recognised to deliver this training.

How companies in Southeast Asia are building knowledge and competence

Some companies in Southeast Asia organise both external and internal training for directors. For instance, in 2022, board members of Malaysia's IOI Group attended external training sessions on climate change, net zero carbon emissions, and sustainable palm oil and also participated in an internal workshop on the TCFD framework.[225] At Ayala, in 2023, external consultants were brought in to train the board on ESG and climate change and the Sustainability Committee invited subject matter experts to deliver briefings on biodiversity, nature, and the Taskforce on Nature-related Financial Disclosures (TNFD) framework.

Some Southeast Asian companies have also instituted formal training for the broader organisation. CIMB, for instance, established a Sustainability Academy in 2022 to organise capability-building programmes for members of group and regional boards, senior executives, and other staff. Among its activities is engaging CISL to provide customised training on sustainability for 500 board members and senior leaders[226] Earth on Board was also engaged to work with CISL to specifically deliver the training portion for the board of CIMB.

While "classroom" learning can help embed foundational knowledge, companies should also consider offering supplementary "experiential learning" opportunities (i.e., allowing leaders to "see things first-hand") to help deepen the boards' and managements' understanding of climate change-related challenges and opportunities. In an interview for this Guide, a Singaporean non-executive director (NED) with an engineering background emphasised the importance of going out into the field. "Every company should send the board and management out to see things first-hand…. So, if your company uses a lot of paper products, the directors and senior executives should visit logging operations to see the impact of the company's procurement practices on the environment."

To enrich board discussions on potential approaches to tackle climate change, some Southeast Asian companies have organised – or are planning to arrange – experiential activities. Seeking to better inform their discussion on whether and how to roll out EV fleets, the board and management of a Southeast Asian public transportation company travelled to China to visit EV manufacturers and see EV transportation networks in operation. To help build awareness of how preserving biodiversity can further the company's sustainability goals, a Malaysia-based independent director and sustainability committee chair is planning a trip for the board to visit a region where biodiversity is at risk.

Lastly, experiential learning serves to not only inform and educate but also increase the participants' confidence and conviction. According to the above-mentioned Singaporean NED, "After these trips, the board – even members who were initially reluctant to take part – will usually get fired up and feel more confident and motivated to tackle the issue at hand."

Another way to build directors' sustainability knowledge is by involving them in external-facing activities. One Southeast Asian chief sustainability officer (CSO) invites board members to speak at conferences or host sessions at client events. According to the CSO, "This will usually prompt them to request briefings and ask deeper questions on things that they don't fully understand."

The complexity and technical nature of climate action has also led some Southeast Asian boards – including land transport provider ComfortDelGro, agri-business Wilmar, and financial institutions CIMB and DBS – to recruit members with a sustainability background. In the case of DBS, the board recruited an Oxford academic who is a sustainable finance expert to serve on the sustainability committee but who is otherwise not a member of the board.

According to one Southeast Asian CSO, "One of our outside directors told me that even after receiving formal training, it's hard for many board members to engage and absorb if it's not something directly related to them. For hot topics like palm oil, everyone chimes in. But things like cement manufacturing or general things they learn in training courses, they find it hard to really engage with the subject matter because it's too distant and abstract. For us, the solution was to bring in new board members who have direct and in-depth sustainability experience."

The 2024 ASEAN Board Trends survey indicates this view is widely held, with 45% of respondents saying that their board plans to recruit new directors with "specific sustainability, climate or ESG-related skills/expertise." Earth on Board recommends that each board should have a diverse representation of stakeholders, particularly in view of a global shift away from shareholder primacy to a stakeholder economy. This would ideally include board members from non-traditional sectors such as civil society, to ensure that the board is enriched by a diversity of perspectives to take robust climate action. Generational diversity and cultural diversity should also be considered alongside gender diversity, with the latter being absolutely necessary but far from sufficient.

B. CORPORATE CLIMATE TRANSITION: FOCUS AREAS AND TOOLS

In order to lead the company's climate transition effectively, the board of directors must focus its oversight and draw on tools to ensure steady progress in achieving climate action goals and objectives.

Important steps that the board should take include the following:

- Measuring the company's carbon footprint
- Assessing climate risks and opportunities
- Setting science-based climate goals and a transition plan
- Ensuring alignment within the organisation and its value chain
- Leveraging available tools to ensure steady progress

Corporations that do not adopt such best practice measures as part of sound corporate governance risk being laggards on climate change and will be more vulnerable to the legal risks discussed earlier, besides being commercially uncompetitive.

Measuring the company's carbon footprint

As the CSO of a Singapore-based bank put it, "Once things get measured, they get managed." To combat climate change effectively, a company must understand its own carbon footprint. A critical task for the board, therefore, is to make sure that management undertakes an assessment of the company's direct (Scope 1) and indirect (Scope 2 and 3) GHG emissions.

Once they have relevant emissions data – including aggregate volume, types of emissions, and the main sources of emissions – the board and management can then start to devise an appropriate decarbonisation strategy and decide on the areas to prioritise. For example, GoTo Group's GHG inventory showed that "on-demand and logistics services" accounted for nearly 75% of its total emissions, leading the company to focus on the transition of its fleet to EVs as the most critical lever to achieve its decarbonisation objective.[227]

The board should undertake a full and detailed GHG inventory, but it need not wait until this is completed before taking action. A higher-level assessment – for example, using expenditure-based rather than the more complex and data-intensive activity- or production-based methodologies – can yield helpful information to aid board and management discussion and decision-making on decarbonisation, particularly in the initial stages of climate transition.

To ensure integrity, rigour, and comprehensiveness, companies will typically contract an external firm to conduct a full GHG inventory. The Philippines' Globe Telecom, for example, enlisted the assistance of consultancy South Pole to undertake a comprehensive GHG baseline accounting and validation of its Scope 1, 2, and 3 emissions (see Boxes 4 and 5 below).[228] Explaining the benefits of drawing on a specialist firm, a Southeast Asian sustainability manager noted that "a comprehensive, third-party assisted GHG inventory pinpointed where we need to focus our decarbonisation efforts and opened our eyes to the work we need to do to achieve our net zero ambition. The external consultant also challenged us to strengthen the rigour of our approach and showed us how to use the different types of data that we maintain to calculate our emissions."

Summary of GHG Emissions in tCO_2e

	FY 2020	FY 2021	FY 2022
Scope 1 emission[a]			
Fuel Combustion (Stationary)[b]	**31,649.19**	**41,877.33**	**45,025.25**
tCO_2 (Carbon Dioxide)	31,211.93	41,298.56	44,402.75
tCH_4 (Methane)	3.41	4.43	4.68
tN_2O (Nitrous Oxide)	433.86	574.35	617.82
Fuel Combustion (Mobile)[c]	**4,712.85**	**5,281.63**	**6,300.22**
tCO_2 (Carbon Dioxide)	4,656.26	5,218.71	6,228.12
tCH_4 (Methane)	5.24	6.06	8.40
tN_2O (Nitrous Oxide)	51.35	56.86	63.70
Fugitive - Refrigerants[d]	**N/A**	**3,980.47**	**2,871.28**
Scope 2 emissions[e]			
Location-based[f] (based on average grid emission factor)	424,163.82	522,939.07	517,382.47
Market-based[g] (based on supplier-specific emission factor)	409,208.43	457,302.65	431,790.91
Total emissions	**445,878.74**	**508,442.10**	**486,316.44**
GHG emissions intensity (tCO_2e/Billion Pesos Gross Service Revenue)	**3,045.87**	**3,339.24**	**3,078.36**

[a] *Restated emission values for Stationary and Mobile emissions using latest emission factors This includes the equivalent emissions of the respective GHGs: Carbon Dioxide (CO2), Methane (CH4), and Nitrous Oxide (N2O) using the latest emission factors derived from BEIS 2022.*
[b] *Stationary emissions are emissions coming from the company's genset fuel consumption across its network facilities (i.e. core network, cell sites, etc.), corporate offices, and mixed-used facilities. Values for FY 2022 excludes consumption associated with Typhoon Rai (Super Typhoon Odette) and sites ported over to TowerCos in 4Q 2022.*
[c] *Mobile emissions are emissions coming from the company's owned and leased fleet. Emission factor used was based on the assumption that both diesel and gasoline fuel used are biofuel blends.*
[d] *Fugitive emissions were not previously disclosed. Globe uses cooling systems applicable to each facility (i.e. air, water, refrigerant)*
[e] *Restated values of emissions for FY 2020 and FY 2021 due to an update in the calculation methodology as aligned with the GHG Protocol Corporate Accounting and Reporting Standard. Location-based and Market-based emissions are calculated using the Philippine Department of Energy (DOE) 2015-2017 National Grid Emission Factors for both non-renewable and renewable energy sources*
[f] *Values for FY 2022 excludes consumption from sites ported over to TowerCos in 4Q 2022.*
[g] *Market-based emissions excludes all renewable energy consumptions from Power Purchase Agreements (PPA) and retired RECs.*

Box 4: Globe Telecom's Scope 1 and 2 emissions[229]

Summary of Initial Scope 3 GHG Emissions

Scope 3 Category	Emission Sources	Percentage of Total Scope 3 Emissions (%)
Purchased Goods and Services[a] Extraction, production and transportation of goods and services purchased	Power and communication structures, data processing, hosting and related services, architectural, engineering and related services, other computer-related services, facilities and building management, etc.	77.42%
Capital Goods[a] Products that have an extended life and are used by the company to manufacture a product, provide a service, or sell, store, and deliver merchandise	IT devices, power cables, generators, commercial structures, etc.	12.86%
Fuel- and Energy-Related Activities[b] Upstream life cycle emissions from fuel and electricity generation	Fuel extraction, production and transportation and grid transmission and distribution losses	7.59%
Upstream Transportation and Distribution Transportation and distribution of goods and services to Globe	Transport from suppliers, transport to customers paid by Globe	0.50%
Waste Generated in Operations Management, treatment, and disposal of operational wastes	Landfilling, recycling, etc.	<0.01%
Business Travel Travel and accommodation of employees and contractors for official business purposes	Air travel, ground travel, hotel accommodation, etc.	0.09%
Employee Commuting Employee travel between home and work	Private transport, public transport, teleworking, etc.	0.21%
Upstream Leased Assets Operation of assets leased by the organization (lessee) in the reporting year not included in Scopes 1 or 2	Electricity consumption of Globe-Owned Stores	0.13%
Downstream Transportation and Distribution Transportation and distribution of products sold by the organization	NA[c]	NA
Processing of Sold Products Processing of intermediate products sold by the organization	NA[d]	NA
Use of Sold Products Use of sold goods that require energy to operate	Mobile phones, tablets, broadband devices, etc.	1.18%
End-of-Life Treatment of Sold Products Waste disposal and treatment of sold products	Disposal and treatment of sold devices, its accessories, manual booklets, and packaging	<0.01%
Downstream Leased Assets Operation of assets owned by the company (lessor) and leased to other entities, not included in Scopes 1 or 2	NA[e]	NA
Franchises Operation of franchises not included in Scopes 1 or 2	Electricity consumption of Globe Premium Dealers	0.02%
Investments Operation of investments not included in Scopes 1 or 2	Investments in diversified financials, telecommunication services, etc.	<0.01%

[a] *Calculated from Globe's aggregated spendings per commodity category*
[b] *Emissions are a direct result of Scope 1 fuel combustion and Scope 2 purchased electricity; 95% are from purchased grid electricity*
[c] *Since the transport to customers was paid for by Globe, associated emissions were categorized under Upstream Transportation and Distribution, per the GHG Protocol; the transport undertaken by the customers themselves (e.g., pick-up at stores) has not been accounted for*
[d] *Scope 3 category not applicable since Globe has no intermediate products*
[e] *Emissions for facilities leased by Globe to other companies already included under Scope 1 and Scope 2*

Box 5: Globe Telecom's Scope 3 emissions[230]

Boards should also be aware that GHG inventories require regular updating. Every year, GoTo Group updates its GHG inventory – which comprises direct and indirect emissions – in order to measure progress made toward achieving its stated targets. GoTo Group has also stated that it subjects its GHG inventory figures to external audits to ensure rigour in data collection and accounting.[231]

Assessing climate risks and opportunities

Although climate change is expected to significantly impact all companies, the specific risks and opportunities presented depend on individual situations. Accordingly, an important step for boards is to ensure that the company undertakes a thorough and rigorous assessment of climate risks and opportunities, and document their decision-making process. Assessing climate risks can be a strategically worthwhile exercise that holds value beyond avoiding legal difficulties, as it can demonstrate market leadership to reduce an organisation's impact on the climate.

In Southeast Asia, several interviewees observed that sustainability and climate risks are treated principally as a compliance issue, rather than as a strategic matter that could open up promising opportunities. According to one Southeast Asian NED, "A lot of the board's focus on sustainability in the Southeast Asia region is compliance driven. Fewer companies look at climate action as a way to gain competitive advantage."

In practice, many Southeast Asian companies discover that following through on their sustainability commitments can provide opportunities to increase operational efficiency and/or reduce costs. GoTo Group, for instance, has found that reducing GHG emissions by pooling food orders from multiple customers and delivering them on a single journey has improved driver productivity. At a Hong Kong-based apparel manufacturer, the CEO noted that "we came to realise that saving energy, saving water, and reducing waste meant saving money and there was no impact on the customer in terms of price and quality." Moreover, he mentioned that installing solar panels at its factories in Vietnam was financially profitable because the energy cost savings realised typically started to exceed the capital outlays within 5-7 years and that "a lot of sustainability projects have attractive returns."

Interviewees have also observed that the different elements of the TCFD framework have enabled companies to more systematically and holistically consider how climate risks and opportunities could impact their operations and overall strategy under different climate scenarios and consider how risks could be incorporated into the company's risk management processes. At a Hong Kong-based trading firm, for instance, the TCFD's systematic approach to identifying and assessing climate risks led to efforts by management to develop a more structured approach to incorporate these risks into the company's risk management processes and business strategy. For a Southeast Asian marine communication systems provider, the results from TCFD-driven scenario analyses inform capital and technology investments over the next 5-6 years.

In addition, at a Thai financial institution, the decision to adopt the TCFD framework helped to bring a more methodological approach to measuring and implementing sustainability across the organisation. According to

an executive at the bank, "In the past, different business units would pursue their own sustainability strategies but the adoption of a uniform set of indicators through the TCFD process enabled top management to develop a more coherent approach and set priorities for the entire organisation. In addition, it has facilitated the cross-pollination of product offerings, such as extending EV loans from large corporate borrowers to SME and consumer clients."

For many Southeast Asian companies, the assessment of climate risks and opportunities is a journey, in which the scope, depth, and sophistication of analysis increases over time. For example, at ComfortDelGro, a preliminary assessment of climate risks and opportunities provided in its inaugural TCFD report in 2022 was followed a year later by deeper scenario analysis and more granular discussions of physical and transition risks, the resulting business impacts on the company (segmented by quantitative and qualitative impacts), and the resilience of the company's decarbonisation strategy.[232]

Assessing risks and opportunities can be a complex endeavour and many Southeast Asian companies realise that they can benefit from expert assistance. At Indonesia's agribusiness-based food company ANJ, which in 2022 committed to undergo SBTi validation of its net zero targets, management felt that it possessed a "very good understanding of our climate change risks" but nevertheless decided to conduct a formal climate risk assessment in 2023 with the assistance of external experts in order to obtain an objective view of its readiness and to identify any gaps and areas for improvement.[233]

Setting the company's climate ambition and devising a transition plan to deliver it

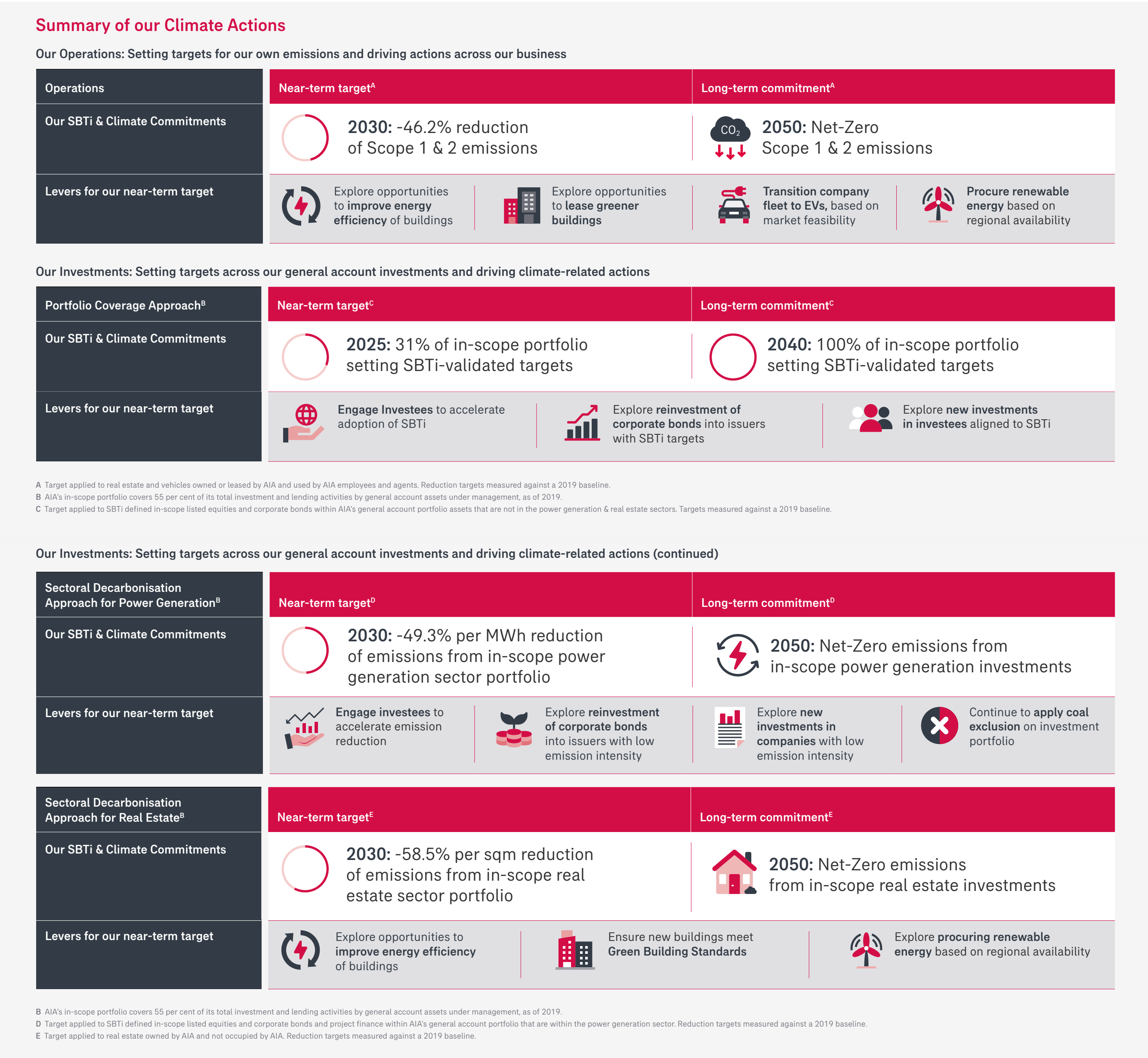
As discussed in Section 5, transition planning is growing in importance. According to Professors Khoo Guan Seng and Mak Yuen Teen, boards and management considering net zero pledges should ask themselves the following questions:[234]

- What does alignment with the Paris Agreement mean in terms of the structure of our portfolio and the companies that we finance (in the case of banks and other financial institutions) or how we run our business and operations?
- Which sectors and companies will we have to reduce exposure to? What does it mean for our own operations and people?
- Are we willing to exit profitable customers or sectors?
- Which exit/reduction strategies could we implement?
- What timeframe is our exit strategy over?

In its 2023 transition plan, insurer AIA laid out in detail its plan to deliver its 2030 targets. Notable features include:

- Segmentation by operations and investments (including sector-specific pathways for power generation and real estate) and the key levers for achieving 2030 targets (see overview of AIA's climate actions in Box 6);
- An assessment of progress made and the next steps on integrating climate risks into the company's decision-making processes, governance, internal and external engagement, and integrating sustainability beyond climate action; and
- A description of how different types of physical and transition risks will impact AIA as an underwriter of insurance policies and as an investor.

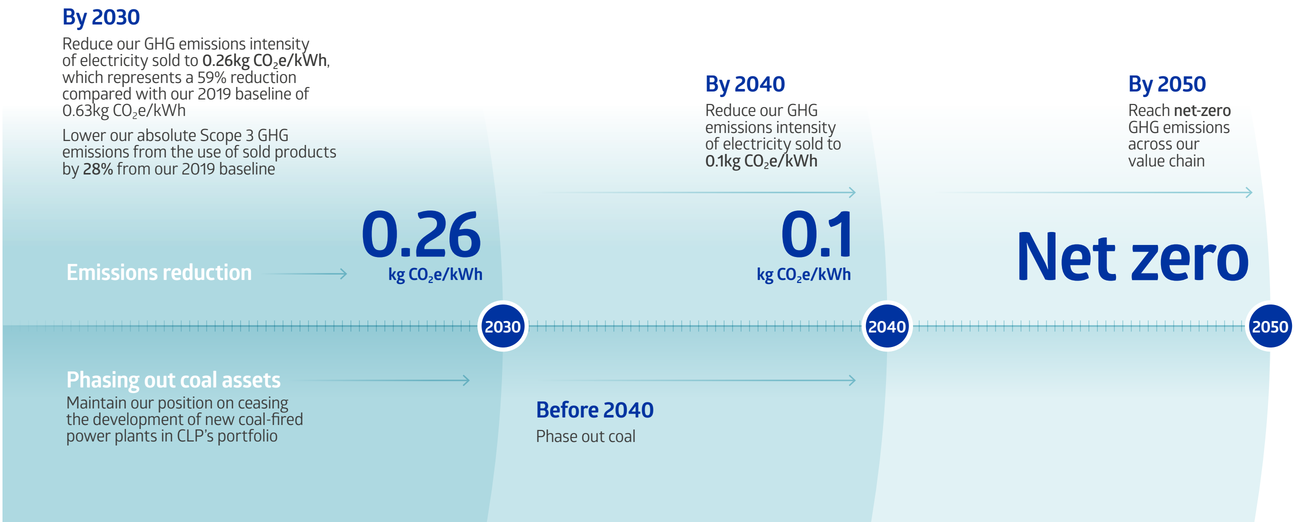
As discussed previously, significant assumptions underpin all transition plans. For example, AIA's 2023 transition plan emphasised that its ability to decarbonise its operations depended on a variety of factors including the availability of "green real estate," access to renewable energy and the maturity of EV infrastructure (particularly charging stations) across the diverse geographies in which it operates.[235] For boards, it is essential that they ensure that such assumptions are periodically reviewed for continuing relevance and robustness.



Box 6: Overview of AIA's climate actions to achieve 2030 decarbonisation targets[236]

When formulating their transition plans, some Southeast Asian companies adopted science-based targets and submitted them to SBTi for review and validation. Other Southeast Asian companies with SBTi-validated net-zero targets include GoTo Group in Indonesia, Sarawak Energy in Malaysia, Globe Telecom in the Philippines, City Developments Limited, Singapore Telecom, and Starhub in Singapore, and Charoen Pokphand Foods, Siam Cement, and Thai Union in Thailand.

Companies should continue to raise their ambition even after their targets have been validated. Indeed, targets must be revised to keep up with the changing commercial and regulatory environment as well as to reflect evolving climate science and technological advances. In 2021, CLP had its 2030 emissions reduction targets validated by SBTi based on the level of decarbonisation required to limit global warming to well below 2°C above pre-industrial levels.[237] As part of the triennial review of its decarbonisation targets, CLP recently tightened its 2030 near-term GHG emissions intensity target for electricity sold from 0.3kg CO2e/kWh to 0.26kg CO2e/kWh (see Box 7 below), bringing its decarbonisation targets to be "more closely aligned to the international climate goal of limiting global warming to 1.5°C above pre-industrial levels."[238]



Box 7: CLP's key targets and commitments[239]

Ensuring alignment within the organisation and its value chain

To ensure effective climate action, it is essential that there is strong alignment within the boardroom, between board and management, and between top leadership and the rest of the organisation and its value chain. In practice, this is not a given and possibly not commonly the case.

For instance, an executive at a Southeast Asian financial institution observed that "not so long ago, comments from the board were often scattered and sometimes the same question was asked by directors in different ways, which took up valuable time" and hampered management's ability to take practical actions. To bridge different levels of understanding among board members and to strengthen alignment with management, the bank organised a day-long offsite that brought together the entire board, top management, and heads of business functions to explore what sustainability meant for the institution, its aspirations in this area, and how progress would be measured. The discussions were moderated by an external facilitator and helped to "reset everything for us." Whereas sustainability issues were previously discussed in isolation from corporate strategy, the common understanding reached at the offsite led to the subsequent reformulation of corporate strategy in which half of the 20 key actions dealt with different aspects of sustainability.

According to the above-mentioned executive, the quality of discussions on sustainability at board meetings has also improved. The executive says that, "Now, with a common understanding among board members of the 'terminology' and a consensus between the board and management on where we are and where we want to be on sustainability, the board engages the executive team in a more focused, business-relevant way."

Some Southeast Asian companies have pursued initiatives to achieve alignment more broadly within the organisation. In recent years, Ayala's annual sustainability summit – which gathers 300-400 executives from across the Ayala group – has focused on climate change. According to a member of the sustainability team, the annual summits "help to form a common understanding and alignment, it brings climate change to the forefront, and it increases interest in the topic."

Within the boardroom, a Southeast Asian sustainability expert who sits on the boards of two listed companies spoke of the importance of being pragmatic and speaking the language of business when engaging with board peers. "It is essential to couch climate risks and other sustainability matters in terms of the potential impact on the company's balance sheet, the possibility of asset impairment, and how sustainability risks and opportunities will shape the financial statement."

Earth on Board recommends that, in the same way, the selection process of a new supplier must go beyond basic metrics such as price, quality and delivery time, and also include consideration of the supplier's resilience to climate change. Given the exposure of some regions, particularly in Southeast Asia, to extreme weather events, water scarcity and perturbations in supply chain stability, these aspects of the relationship with a supplier are of the utmost importance.

Moreover, as combating climate change is a collective effort where collaboration with governments, suppliers, customers, civil society organisations, communities, and even competitors is critical to success, companies should seek to build alignment beyond its four walls. For instance, GoTo Group has stated that it is important to share information in "an open and transparent manner, as part of our belief that sustainability is truly a pre-competitive space and one we need to solve collectively."[240] To help fulfil its pledge to transition its fleet to EVs by 2040, the company has stated that it seeks to collaborate with partners in the transportation ecosystem to, *inter alia*, build EV battery infrastructure and manufacture two-wheeled EVs domestically.[241] Another example, from the maritime sector, is how Malaysia's MISC Berhad and Singapore's Maritime and Port Authority are taking part in the Castor Initiative, a global collaboration of key industry players to develop green ammonia.

Leveraging available tools to ensure steady progress

Lastly, boards should seek to draw on different tools to ensure that management makes steady progress to achieve their companies' near-term and longer-term climate action goals.

Climate-related KPIs for executives

Adding climate-related metrics to the set of KPIs used in executive remuneration could ensure that management maintains focus on delivering the company's climate commitments. At European nutrition firm dsm-firmenich, 25% of the payout under the long-term incentive plan is determined by absolute reductions of Scope 1 and 2 emissions aligned with SBTi-validated targets.[242]

In Southeast Asia, embedding sustainability KPIs – including climate-related ones – in executive pay is becoming more common. According to the 2024 ASEAN Board Trends Report, 46% of respondents said that their "organisation links sustainability and ESG metrics to management's KPIs."

At Indonesia's ANJ, 15% of the performance-based annual bonus of senior management is linked with "the targets of ESG initiatives within our Responsible Development program."[243] Meanwhile, a portion of the CEO's and CSO's compensation at Singapore's Starhub is determined by progress in the achievement of climate-related targets.

Some Southeast Asian companies are taking a more incremental approach. GoTo Group, for example, started to incorporate ESG-related KPIs in evaluating performance at the business unit and functional level and recently began to explore establishing ESG-linked incentive schemes for individual leaders.[244]

One Singapore-based sustainability expert argues that if climate action is critical to the long-term competitive success of a business, then weighting climate-related KPIs as much as 50% could be appropriate. The expert explains that "in some quarters, some may think 25% as a good standard but others, including me, think it should be 50%."

Some companies have also deployed sustainability related KPIs more broadly. At Indonesia's ANJ Group, for instance, "General managers of plantations used to be paid only in relation to production outcomes, so they considered anything else as a distraction. However, now that ESG is part of their KPIs, the company has seen a shift in attitude."[245]

Setting an internal carbon price

An internal carbon price (ICP) can help align the broader organisation to a company's net-zero objectives and incorporate these goals into internal decision-making. TCFD defines ICP as "an internally developed estimated cost of carbon emissions" that could be "used as a planning tool to help identify revenue opportunities and risks, as an incentive to drive energy efficiencies to reduce costs, and to guide capital investment decisions." Whilst ICPs can be instrumental for efficiency gains internally, boards must be conscious to ensure they translate into real change across their business.

In 2021, the board of directors of Malaysia's Sunway approved an ICP framework to "help us align with and support a carbon management strategy that will drive us towards achieving our Net Zero Carbon Emissions by 2050 target. Setting internal carbon pricing can also incentivise the business divisions across the Group to reduce their carbon emissions and enable low-carbon innovation."[246] According to Sunway, in 2022-2024, any business unit ("BU") that exceeds a pre-defined threshold level of emissions will pay a price of RM15 (US$3.5) per metric tonne of CO2-equivalent (MTCO2e), which will be deducted from that BU's bonus pool. In future years, the company plans to progressively reduce the number of penalty-free emissions.[247]

Likewise in 2021, CIMB introduced a similar internal carbon price mechanism to Sunway's. In CIMB's case, operating entities and BUs are "charged a penalty for every tonne of Scope 2 GHG emissions emitted in excess of their divisional cap."[248] According to CIMB, the objectives of introducing an ICP include 1) preparing for future GHG regulations such as carbon taxes, 2) driving internal behavioural changes by explicitly charging for excess carbon emissions, and 3) incorporating carbon costs into investments and upgrades, such that those with higher carbon emissions will see poorer returns. For 2023, CIMB's ICP was set at RM70(US$16.2)/MTCO2e, and the price is expected to rise to RM275(US$63.8) – RM355(US$82.3)/ MTCO2e by 2030. Proceeds generated from the ICP will be reinvested into capital expenditures to reduce Scope 1 and 2 emissions or purchase renewable energy certificates and carbon offsets.

In 2023, IOI Corporation adopted an ICP and has since set a price of RM 60(US$13.9)/MTCO2e for plantations and RM 80(US$18.6)/MTCO2e for resource-based manufacturing in Malaysia and EUR 30(US$33.3)/MTCO2e for operating sites in Germany. The ICP was intended as a "risk mitigation tool to prepare for climate related risks events, such as resource availability and supply chain disruption, and for planning decarbonising projects to mitigate our GHG emissions as we transition to a low-carbon economy."[249]

To ensure that ICPs assist them in the delivery of climate targets, companies should follow safeguards when designing and implementing this type of tool. This would include considerations on adequate pricing level and scope of emissions to fully internalise carbon costs, independent implementation appraisals of the ICP to check its effectiveness, and regular updates to the ICP and its parameters to ensure alignment with the latest science.[250]

Earth on Board considers that not adopting an ICP sends a signal that the corporation in question does not factor the protection of nature into its cost system, but erroneously considers nature and its resources as free and unlimited. Such an approach is anachronistic and inappropriate in view of the rapid breaching of planetary boundaries and should be corrected so that the corporation will not make economically wrong decisions. For example, if a business does not use ICP or does not project the cost of natural capital or services into the future to evaluate its portfolio of research and development projects, then it is choosing priorities for the businesses' future based on a criterion that is no longer relevant. This would result in the building of future stranded solutions and assets without value. A board of directors that accepts these practices without challenging them would not be fulfilling its duties of protecting the company's future interests. Shareholders could challenge this as being potentially harmful to their interests.

Climate finance

Financial instruments such as a sustainability-linked loans (SLLs) and sustainability-linked bonds (SLBs) can also be part of a company's net-zero transition. The subsection in Section 7, on 'Taking advantage of climate finance', has already set out various examples of climate finance. Climate finance is also ideally deployed as part of robust transition plans. As observed by a senior Japanese banker, although the cost of capital benefits offered by SLLs/SLBs (such as a decrease in borrowing costs by around 50 basis points) may not be enough to fundamentally change behaviours, SLLs/SLBs linked to a company's transition plan could be helpful to "keep it in line."

It bears noting, however, that the effectiveness of financial instruments such as SLLs and SLBs as a tool to drive effective decarbonisation will depend on the metrics adopted and whether the targets set are science-based. Care must be taken to avoid the greenwashing and transition-washing related risks outlined in Section 7.

External assurance

Lastly, as a way to ensure rigor and integrity, boards can procure external assurance on climate-related and other sustainability data. For example, GoTo Group has retained Ernst & Young to carry out independent limited assurance on the company's GHG emissions data.[251] As a Southeast Asian sustainability committee chair explained, "Having an extra pair of eyes to validate our sustainability figures is critical and provides comfort to the board about the integrity of our data collection and reporting." Moreover, regulators are reportedly looking into capacity building with assurance providers to extend the obligation of assurance beyond carbon and into biodiversity.

9. CONCLUSION

In an age where we desperately need to halt the worsening effects of climate change, it is no longer sufficient for companies to merely declare a commitment to addressing climate change – they must show this in their actions, disclosures, and strategic pathways for transition. This is particularly so for Southeast Asia, where the impacts of climate change are and will be severely felt. Southeast Asia is one of the fastest growing regions in the world today. It is also one of the most vulnerable to climate change. Absent necessary climate mitigation measures, Southeast Asia could lose a significant fraction of its GDP by the middle of the 21st century. A rapid energy transition is essential to ensure that the climate crisis does not undo the hard-won progress made in the last decades.

Directors of companies in the region have an obligation to step up to this challenge with proactiveness and transparency. Directors will find themselves involved in decisions that will have implications not only for the future of companies but also for the communities in which they operate. They face a changing operating environment, with new and varied climate risks, emergence of shareholder activism, regulatory developments and, importantly, novel business and financial opportunities. This Guide is intended to steer directors in these unprecedented circumstances.

The Guide lays out numerous legal aspects that are essential for directors to be conscious of. These go beyond compliance with traditional environmental obligations and extend to climate disclosure obligations, greenwashing risk from increased scrutiny of climate-related communications, directors' fiduciary duties, and transition plans. Regulatory reforms such as carbon pricing initiatives, feed-in tariffs and net-metering are already requiring companies to assess their business models for near-term and future viability.

It would be inaccurate for directors to view climate change as a "compliance" issue. As this Guide has illustrated, this is a broader question of whether a company's strategy will be viable as Southeast Asia transitions to a low-carbon economy. Boards in Southeast Asia should consider how they organise themselves, where they should focus their efforts and the tools they should draw upon to better oversee their companies' climate transition, as outlined by this Guide. Questions must be raised in boardrooms as to whether a company's actions are exposing it to undue reputational risk, and how climate change will affect its sources of financing and supply chains.

Directors will also have to consider whether the corporations they oversee are taking adequate advantage of climate finance and ensure that business liabilities and opportunities resulting from the energy transition are not being overlooked. Failure to do so could lead to lawsuits (including against directors), various types of investor action and costly negative publicity. On the other hand, businesses that step up to the challenge with transparency and proactiveness will be able to position themselves as leaders, contributing to Southeast Asia's sustainable development journey.

For a company, drawing up a climate strategy may, at first glance, appear challenging. Notwithstanding, doing so is imperative for robust climate action and to manage legal risk. This Guide has suggested concrete actions which could be helpful starting points. Tools and sources of guidance to aid this process are available,[252] and directors should leverage them.

ENDNOTES

[1]Given that the particular legal obligations and regulatory structures that each corporation and board have to navigate is unique to that corporation's jurisdiction and industry, the examples of corporate sustainability strategies contained in this section are meant for informational purposes only and are not an endorsement of a particular strategy or company. The present Guide includes anecdotal information obtained from interviews on corporate sustainability strategy with various corporate representatives. These are for informational purposes only. They should not be interpreted as an endorsement of any business entity named herein by ClientEarth, Earth on Board, Climate Governance Malaysia, or any of the authors of or contributors to this Guide. For the avoidance of doubt, inclusion of a particular entity as an example in this Guide does not amount to a view by ClientEarth, Earth on Board, Climate Governance Malaysia, or any of the authors of or contributors to this Guide as to the said entity's compliance or non-compliance with relevant laws.

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[200]Directors reading this guide are encouraged to seek expert legal and other advice to address that corporation's tailored for the needs of that corporation. This Guide is meant as a reference only, as are other helpful and complementary references such as the Climate Governance Initiative's and the CCLI and CGI's Directors' Duties Navigator: Climate Risk and Sustainability Disclosures (Sep 2024), available here, which is the fourth edition of the previously titled 'Primer on Climate Change: Directors' Duties and Disclosure Obligations' authored by CCLI. (Sep 2024) available here.

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