Shareholder Litigation in Response to the Climate Emergency and Human Right to a Healthy Environment in Asia and the Pacific

Report prepared for the Raoul Wallenberg Institute of Human Rights and Humanitarian Law by

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Executive Summary

The objective of this study was to search for and review material that sheds light on the role of shareholders of companies in influencing internal corporate policy on climate change and the human right to a healthy environment.

While shareholders may exert influence in multiple ways, litigation between shareholders and corporations carries unique weight as lawsuits are a matter of public record, and in some jurisdictions, a judgment in a lawsuit against one company can generate legal norms that are binding on other companies.

On the other hand, shareholders can also influence internal policies by exercising voting rights at company meetings, but such instances are less visible and more difficult to trace unless they are reported in the media, and do not create generally applicable legal obligations on other companies.

As part of the study, a search was conducted for primary and secondary material that offered evidence of shareholder influence on corporate policy on climate change and environmental matters. The search was carried out for several jurisdictions in the Asia-Pacific region – namely India, Singapore, Hong Kong, Indonesia, and Australia.

The search for material revealed that in most jurisdictions there was no visible evidence of instances where shareholders had exercised their rights at meetings when it came to matters concerning climate change and the environment. On the other hand, litigation involving shareholders and corporations pertaining to environmental issues was well-documented, albeit only in one jurisdiction among the several Asia-Pacific jurisdictions investigated in this study.

The domestic company laws of the jurisdictions surveyed also varied, with some imposing greater obligations on company directors to take account of climate change and environmental issues in directing the affairs of their companies. While the way that directors’ duties are set out and interpreted under domestic law could have an impact on the prevalence of shareholder actions against directors in this area, other relevant factors could include the lack of awareness and incentive on the part of shareholders to take legal action when directors fail to consider environmental impact in their decision-making processes.
Key Findings

When considering the intersection of climate change and environmental litigation involving corporations, shareholder lawsuits make up a relatively small proportion of all cases filed. This indicates that while shareholders have the potential to hold companies and their directors accountable for environmental harm, there are likely other factors that influence the decision not to pursue legal action in this area.

It is noteworthy that in Asia and the Pacific, all shareholder lawsuits relating to climate change and the environment so far have been filed in Australia. This suggests that the legal and regulatory landscape in Australia, among other factors, may be particularly conducive to such litigation.

Some jurisdictions lack highly visible government enforcement of environmental protection laws; this highlights the importance of shareholder litigation as a means of holding corporations accountable.

While the reasons for the relatively low number of shareholder lawsuits related to climate change and the environment are likely multifaceted, one important factor may be a lack of awareness among shareholders of the legal rights that may possibly be utilised to hold company directors accountable for environmental harm. Other possible reasons include lack of information available to shareholders to make informed decisions as well as lack of transparency in reporting on environmental impacts and risks on the part of companies. Efforts to improve shareholder awareness and engagement in environmental issues may be important as a precursor to meaningful shareholder lawsuits in this area.

Another important factor is that the scope for shareholder action under company law (e.g. direct actions and the derivative action) is limited to damage or harm caused to the interests of the company and/or shareholders, despite the breadth of directors’ duties in some jurisdictions.
Introduction

Climate change and the need to protect the environment have been and will continue to be a key concern for governments, businesses, consumers, and other stakeholders in both the private and public sectors.

Climate change has a direct impact on the long-term viability of businesses, which often rely on the world’s natural resources, such as fresh water and minerals, and climatic conditions for the production of goods and the supply of services.

Apart from basic concerns over their long-term viability, businesses – including major corporations – have become acutely aware of the need to address climate change and protect the environment to ensure that they:

1. comply with laws and regulations that states create from time to time (including securities laws and listing requirements, environmental protection laws, and regulations requiring disclosure and reporting in high-impact industries);

2. appeal to the changing sensibilities of consumers who have become increasingly environmentally conscious; and

3. remain attractive to internal stakeholders (e.g., employees and shareholders) and external stakeholders (e.g., investors, creditors and entities in the supply chain).

However, these aims are not universally embraced by businesses. As such, litigation has sometimes been used to nudge businesses to do more to address climate change and protection of the environment.

Environmental lawsuits can take multiple forms: e.g. actions under securities and consumer protection laws, public interest litigation, and criminal prosecutions for environmental crimes. Environmental litigation can also take the form of administrative or constitutional proceedings against the state and its agencies; such proceedings may lead to regulatory effects on businesses and corporations.
These actions are typically instituted by external parties that may have effects on corporations and their directors. In recent times, we have also witnessed litigation being initiated by internal parties – i.e., the shareholders of corporations – in their attempts to compel action on the part of their boards to take climate change risks and environmental protection more seriously.

The feasibility, if not viability, of shareholder actions (i.e., direct actions¹ and the derivative action) against directors in the context of climate change and environmental protection depends on how the law regulates the duties of directors.

Commonly, laws governing corporations set out directors’ duties in broad terms, potentially empowering shareholders to institute legal action in cases where directors have failed to take into account climate change risks and environmental considerations in the discharge of their duties and functions. In a few countries, however, the law has taken a more direct approach by specifically incorporating climate and environmental considerations into the scope of directors’ duties or the obligations of corporations.

Another factor that is likely to impact the success of shareholder actions is the practical and legal difficulties and challenges that shareholders face when they attempt to privately enforce directors’ duties via litigation.

In view of these divergences, this study surveyed the laws of selected jurisdictions in the Asia-Pacific dealing with directors’ duties as well as the obligations of corporations in addressing climate change and environment-related risks and threats. This comparative study was undertaken with the aim of determining the viability of shareholder actions concerning climate change and the environment.

In cases where the legal framework is inadequate in this regard, it may be necessary to consider alternative means by which shareholders may influence corporate policy in relation to climate change and the environment. Although not as forceful as litigation, these “soft nudges” could still have a significant impact on shaping an environmentally friendly world. As such, this study also explored selected instances of “non-legal” action adopted by shareholders of companies in the Asia-Pacific jurisdictions identified for the purposes of the study.

Methodology

This study adopted a research design and methodology that combined both the doctrinal and comparative approaches to legal research. Doctrinal research has been defined as “research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps predicts future development”.\(^2\) Doctrinal analysis of existing laws that establish the duties of corporations and their directors in respect of climate change and environmental protection is essential to the evaluation of the potential for shareholder action in this area.

The legal doctrinal analysis encompassed selected multiple jurisdictions, with the goal of identifying similarities and differences in the laws governing corporations and directors’ duties. This necessitated the use of the comparative method – also known as “comparative law” or “comparative legal analysis” – in legal research.

Comparative law contemplates the “study of, and research in, law by the systematic comparison of two or more legal systems; or of parts, branches or aspects of two or more legal systems”.\(^3\) A comparative study can yield valuable insights pertaining to weaknesses in existing legal institutions and approaches, and can also offer suggestions for law reform. Comparative law facilitates the development of alternative approaches not incompatible with existing law that shareholders might avail themselves of to influence corporate policy in respect of climate change and environmental protection, especially in jurisdictions where the existing law is inadequate for the purposes of solving the problem directly and where reform prospects are weak.

This study focused on key jurisdictions in the Asia-Pacific region that are important in view of their influence, size, and proactive approach towards addressing climate change and environmental protection. Accordingly, this study surveyed the following jurisdictions:

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The above jurisdictions span the main legal traditions (common law and civil law), and feature economies from both the Global North and South. There is greater weight placed on geographically, demographically, and/or economically larger jurisdictions with greater actual or potential impact on climate change efforts.

The research for the purposes of this study was conducted primarily via desk review of laws, regulations, judicial decisions, and other secondary sources including journal articles, institutional reports, and news reportage. Data obtained may include proprietary data from commercial databases that cannot be disclosed in unprocessed form. No human subjects were involved in this study and therefore the need for Institutional Review Board approval did not arise.
Country-Specific Reports

India
Overview

India is the world’s largest democracy and most populous country in the world. It is among the world’s ten largest economies and is also the world’s fastest growing economy. India’s feat in economic growth has come at a huge cost: environmental pollution that is so severe that India has been declared the world’s most polluted nation. Air and water pollution in India has increasingly become a threat to human and animal life.

India’s status as a polluter has not stemmed from a lack of laws and regulations. In fact, India is well-known for integrating environmental considerations and factors into its laws and government regulations. For instance, India’s Constitution obliges the state to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. The Constitution also obliges government entities to consider environmental conservation matters in planning and engaging in developmental activities. The Constitution goes a step further by imposing a duty on every Indian citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Apart from constitutional provisions that deal with environmental protection, there are also numerous laws on the subject. In this regard, the Environment (Protection) Act 1986, which enables the central government to take measures it deems necessary to protect and improve the environment and to prevent, control and abate environmental pollution, plays a pivotal role. Other laws include the Wild Life (Protection) Act 1972, Forest (Conservation) Act 1980, Biological Diversity Act 2002 and the National Green Tribunal Act 2010.

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5 Benjamin Parkin, Chloe Cornish and Hudson Lockett, “India Ramps Up Spending to Reclaim Place as Fastest-Growing Economy” Financial Times (1 February 2022) https://www.ft.com/content/a0a6cf20-c4c0-43a0-a717-010167dbf1e7
8 Constitution of India 1949, Art 48A.
9 Ibid, Arts. 243ZD(3)(a)(i) and 243ZE(2)(a)(ii).
10 Ibid, Art. 51A(g).
Environmental Cases

Environmental cases in India are dominated by actions against the state and public authorities. The landmark MC Mehta cases concerning leaking gas from a chemical factory,\(^\text{13}\) the pollution of the Ganges River by leather tanneries,\(^\text{14}\) and air pollution in Delhi caused by automobiles\(^\text{15}\) are useful examples of cases filed against the state. Aside from the above, there are many reported environmental cases that have been filed against the state seeking its intervention and action in protecting the environment and promoting the right to a healthy environment.\(^\text{16}\) Cases have also been filed against individuals\(^\text{17}\) and companies for committing acts of pollution; fines collected consequent to such actions have been directed toward restoration projects.\(^\text{18}\)

Despite the proliferation of environmental litigation in India, there have been no recorded instances of any environmental lawsuits filed by shareholders of corporations against directors for failing to take into account risks and threats to the environment arising from the actions of such corporations. However, this does not mean that there is no basis for such actions to be filed in the interest of protecting the environment. The following section considers the prospects for such shareholder action in India in the context of environmental protection.

Corporate Law Landscape in India

The primary legislation dealing with corporate governance in India is the Companies Act 2013 (Companies Act) and the rules made thereunder. In addition to the Companies Act, the Securities and Exchange Board of India (SEBI) lays down the regulatory framework for corporate governance in India for public companies listed on stock exchanges. The scope for shareholder action is largely dependent on the fiduciary duties of directors. Directors’ duties under Indian company law are set out below.

Directors’ Duties and Shareholder Actions

Section 166 of the Companies Act lays down a number of duties that directors of corporations must comply with. For the purposes of this study, two are of particular relevance. The first concerns the duty of good faith and is reproduced below:

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\(^{13}\) MC Mehta v Union of India 1987 SCR (1) 819; AIR 1987 965.

\(^{14}\) MC Mehta v Union of India 1988 AIR 1115, 1988 SCR (2) 530.

\(^{15}\) MC Mehta v Union of India 1991 SCR (1) 866, 1991 SCC (2) 353.


\(^{17}\) See e.g., MC Mehta v Kamal Nath (1997) 1 SCC 388.

\(^{18}\) See e.g., Manoj Mishra v Delhi Development Authority, Art of Living Foundation and others (7 December 2017, National Green Tribunal).
A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.\footnote{19}

Among the jurisdictions surveyed in this study, India’s company law is the only instance where the \textit{environment} and the \textit{community} have been expressly referred to in setting out directors’ duties. According to one commentary, “the text of section 166(2) seems to leave open the interpretation that there are two duties of good faith; first, to act in good faith in order to promote the objects for the benefit of the members as a whole, and secondly, in addition, to act in good faith in the best interests of stakeholders”\footnote{20}. In other words, the manner in which section 166(2) is framed adopts a \textit{pluralistic} approach,\footnote{21} as opposed to the approach adopted in other jurisdictions, including the UK, where stakeholder interests “such as effect of corporate operations on the environment, employees or local communities, is seen as a \textit{means of generating} long-term shareholder wealth and improving portfolio- and firm- level risk assessment”\footnote{22}.

The following remark exemplifies the Indian position:

\begin{quote}
Apart from considering the material financial risk that climate change poses to a company, directors are required under the pluralist approach of section 166(2) to treat the protection of the environment on its own footing. In doing so, directors must balance the interests of the various stakeholders which, apart from the environment, includes the shareholders, employees and the community.\footnote{23}
\end{quote}

Thus, the provision that imposes on directors a duty to act in good faith is seemingly much broader and specifically requires directors to promote the objects of the company in the best interests of, \textit{inter alia}, the protection of the environment.

However, this may not necessarily mean that shareholders (and other stakeholders) have a free hand to sue directors when directors fail to act in good faith in the interest of the protection of the environment, the community or any other stakeholder. The biggest issue concerns the challenges in enforcing the directors’ duty that section 166(2) sets out. For any claim against a company’s directors that is brought by shareholders to stand, it must be established that a duty was owed to the company or the shareholders as a whole, and that it was breached by an act or omission of the directors. This by no means suggests that an act that disregards the interests of the environment or the community would necessarily

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\textbf{19} Companies Act 2013, s 166(2). \\
\textbf{21} \textit{Ibid}, 105. \\
\end{tabular}}
\end{flushright}
be regarded as a breach of a duty owed to the company. Unless damage to the company or harm to the shareholders can be established, it is unlikely that shareholders can bring a class action under section 245 of the Indian Companies Act or a derivative action under the common law.²⁴

There is, however, one potential avenue under the Indian Companies Act that may provide the means for shareholders to bring an action against their directors in circumstances where the affairs of the company have been or are being conducted in a manner prejudicial to public interest. This is by virtue of section 241 of the Companies Act, which provides for relief in cases of oppression and mismanagement. It has been suggested that “[f]ailing to consider stakeholder interests is conceivably something that would fall within the scope of this clause”.²⁵ Nonetheless, leading commentators have cautioned that “oppression and mismanagement provisions are generally meant to be remedies for minority shareholders, and it remains to be seen whether they are an appropriate avenue for assuaging stakeholder interests in case of breach of directors’ duties”.²⁶

The discussion above suggests that despite the pluralistic language adopted in drafting section 166(2) of the Indian Companies Act, the scope for shareholder action against directors who disregard the interests of the environment and the community, which also captures the interest to protect against climate change and to promote the human right to a healthy environment, appears relatively limited. This would be so, unless the Indian judiciary is willing to engage in judicial innovation to interpret section 166(2) in a manner that would entitle shareholders to bring lawsuits against directors for neglecting to act in the best interests of the environment even in circumstances where such neglect does not cause prejudice to the company itself. A test case under section 241 of the Indian Companies Act might bring about much-needed clarity.

Aside from the duty to act in good faith, the other duty that binds directors that has a relevance to this study concerns the duty to act with reasonable care, skill and diligence:

A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.²⁷

The duty of directors to exercise due and reasonable care, skill and diligence in the context of climate change and the environment translates to a duty to “establish clear systems and processes to identify and address climate risk”.²⁸ This includes the duty to appropriately disclose climate risks (on the lines of well-known reporting frameworks), ensure that they are represented on the balance sheet, and, more generally, formulate

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²⁵ Ibid, at 110.

²⁶ Ibid.

²⁷ Companies Act, s 166(3).

strategies to ensure that the company will resiliently and sustainably operate in a net zero carbon global economy.  

A failure on the part of directors to comply with this duty may give rise to a cause of action on the part of shareholders. Arguably, however, such actions will be limited to circumstances where the breach gives rise to damage or harm to the company – e.g., where there is failure on the part of the directors to take into account climate risks that impact the company’s long-term productivity and sustainability. In addition, shareholders who attempt to bring legal action against their directors for a breach of this duty (as well as the duty to act in good faith) will have to overcome the “business judgement rule,” which:  

is an assumption at law that the directors of a company are acting in the best interests of the company with regard to interests of shareholders. It is a legal doctrine flowing from the obligations of directors to act in the interests of the company and shareholders of the company. The “rule” is a rebuttable presumption, which means that evidence can be produced to challenge the presumption, but because of the way that the rule has been interpreted has the effect of lowering the standard of conduct required of directors when compared to usual standards of negligence. Conversely, it raises the standards of evidence required to prove a lack of duty of care by a director.  

In essence, the business judgement doctrine has the effect of limiting the power of courts to review decisions of directors. Although this doctrine has not been expressly adopted in India (in contrast to developments in the United States and Australia), it has been submitted that a somewhat diluted form of this doctrine has been embedded into Indian company law. Section 463(1) of the Indian Companies Act is an oft-cited example of a provision that embraces this doctrine. Section 463(1) reads as:  

If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such term, as it may think fit.

29 Ibid.  
30 Ibid, 34.  
Although the above provision may seem an obstacle to shareholder litigation, the courts in India have placed more importance on the rights and interests of shareholders, allowing them to scrutinise the decisions and actions of directors.\(^{33}\) Importantly, unlike in the United States and in Australia – where the business judgement rule creates a strong presumption in favour of board decisions made by directors who are loyal and well-informed – in India, the burden lies on directors to prove that their conduct was in the best interests of the company and not unfair towards any of its shareholders.\(^{34}\)

### CSR and Other Reporting Obligations

India was the first country to legally mandate corporate social responsibility (CSR). In every financial year, section 135 of India’s Companies Act makes it mandatory for companies that pass a certain pre-defined threshold of turnover and profitability to spend on CSR a sum equivalent to 2% of the average net profits they made during the three years immediately preceding. In spending the funds on CSR, preference has to be given to the local areas in which such companies operate. Where a company fails to satisfy the CSR spending requirement in any given year, it must provide reasons for such failure in its financial statement for that year. Failure to meet the CSR spending requirement can result in fines being imposed both on the company and its directors.\(^{35}\)

In addition to CSR reporting requirements, publicly listed companies in India are under an obligation to comply with ESG reporting requirements in terms of rules imposed by the SEBI.\(^{36}\) These rules require listed companies to make disclosures on, among other things, environmental aspects, which includes disclosures on resource usage (energy and water) and intensity metrics, air pollutant emissions, greenhouse gas emissions, waste generated and waste management practices, and impact on bio-diversity.

Where the failure to meet CSR and ESG reporting obligations results in fines and penalties imposed on companies (and directors), it seems theoretically more likely that shareholders might bring lawsuits against directors on the basis of a breach of directors’ duties, as it could be shown more easily that such breaches have occurred and caused quantifiable injury or damage to the company or shareholders as a whole.

### Conclusion

India’s economic growth has had severe environmental consequences, with the country being declared the most polluted nation in the world. Nevertheless, India is renowned for integrating environmental considerations into its laws and government regulations, and

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33 Ibid (citing Re Cadbury India Limited 2015 (125) CLA 77 (Bom)).
34 Ibid.
35 Companies Act, s 135(7).
the Constitution obliges the state and its citizens to protect and improve the natural environment. India has several laws, including the Environment (Protection) Act 1986, that deal with environmental protection.

Environmental cases in India are predominantly filed against the state and public authorities, but there have been no reported instances of environmental lawsuits filed by shareholders of corporations against directors. Despite this, India’s Companies Act 2013 imposes a duty of good faith on directors to promote the company’s interests in the best interests of, *inter alia*, the protection of the environment. The pluralistic approach adopted by India requires directors to balance the interests of various stakeholders, including the environment, shareholders, employees, and the community.

India has the potential to build upon its current legal framework and extend shareholder actions to protect the environment from the actions of corporations. By doing so, India can further promote sustainable development, improve corporate governance, and protect the environment for future generations.
Country-Specific Reports

Singapore
Overview

Singapore is an island state (also a city-state) that lies at the southern end of the Malay Peninsula. With a total area of only 733.2 square kilometres\(^{37}\) and a population of 5.637 million people,\(^{38}\) Singapore is the third most densely populated country in the world. With an average elevation of only 15 metres above sea level, Singapore is one of the lowest-lying countries in the world and particularly susceptible to the impacts of climate change.

Singapore’s journey from third world to first world is a well-documented one, and nowhere is this more evident than the state of the country’s living and environmental conditions. When Singapore gained independence on 9 August 1965, her main rivers and basins were severely polluted, and the sewage, sanitation and drainage systems in place were less than satisfactory. This led to frequent outbreaks of diseases such as cholera and typhoid. Today, the situation has improved by leaps and bounds and Singapore generally scores well on various rankings and metrics that measure the city’s liveability and environment.

Singapore is a republic with a parliamentary system of government based on the Westminster Model. A written constitution sets out provisions undergirding the executive, legislative and judicial organs of state. The constitution does not have any provision relating to or referring specifically to the environment.

The overarching legal and regulatory framework relating to the environment in Singapore is best described as encompassing the following traits:\(^{39}\)

Environmental law in Singapore comprises statutory law as well as common law principles of tort which serve as constraints on a landowner’s use of his land. There are also ‘soft laws’ such as guidelines, codes of practices and directions, issued by the Ministry of Environment and Water Resources (MEWR)’s statutory boards, the National Environment Agency (NEA), and the Public Utilities Board (PUB). Other relevant ministries and boards include the Ministry of National Development’s National Parks Board (NParks) and the Agri-Veterinary Authority (AVA); as well as the Ministries of Health and of Law. The ‘soft laws’ issued by the NEA include Codes of Practice on Pollution Control, Surface Water Drainage, Hazardous Waste Management, and on Environmental Health, as well as the [Singapore Green Plan 2030], and the Sustainable Singapore Blueprint 2015.

\(^{37}\) Figures obtained from the Singapore Department of Statistics website at https://www.singstat.gov.sg/

\(^{38}\) Figures obtained from the Singapore Department of Statistics website at https://www.singstat.gov.sg/

Polluting acts may result in both forms of law operating: prosecutions are brought under national laws passed by Parliament, but individuals who have suffered harm will have to bring personal actions in tort against the polluter, using the common law private tort actions of nuisance, negligence, and the rule in *Rylands v Fletcher*\(^{40}\) to recover damages and/or obtain an injunction. Nuisances may also be public nuisances under the Environmental Public Health Act.\(^{41}\)

The key legislation relating to pollution in Singapore are:
- the Environmental Protection and Management Act 1999; and
- the Environmental Public Health Act 1987.

The key legislation relating to energy, nature and resource conservation are:
- the Animals and Birds Act 1965;
- the Carbon Pricing Act 2018;
- the Endangered Species (Import and Export) Act 2006;
- the Energy Conservation Act 2012;
- the Parks and Trees Act 2005;
- the Resource Sustainability Act 2019; and

Environmental Protection – Approach

It has been observed that “the cause of environmental protection is primarily perceived as the domain of the legislative and executive branches”\(^{42}\) and that the “Singapore courts’ engagement with environmental protection is at present rather negligible”.\(^{43}\) The rationale for such an approach has been attributed to the following two reasons:

The first is relatively straightforward – the framework of common law doctrine provides limited avenues for environmental litigation, and indeed presents significant obstacles in this regard in Singapore. The second reason relates to Singapore’s socio-legal context and the perceived institutional role of the courts within this context. The Singapore courts

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\(^{40}\) *Rylands v Fletcher* [1868] LR 3 HL 330. Note the developments following *Cambridge Water Co Ltd v Eastern Counties Leather* [1994] 1 All ER 53 (HL), which added another element to this rule, i.e. that damage must be foreseeable; bringing it in line with the requirements for negligence.


\(^{43}\) *Ibid.*
have taken a restrained view of their institutional role. Indeed, they have indicated that their preferred conception of their role, vis-à-vis the other institutions of government, is a ‘green-light’ one – on this view, it is not the role of the courts to aggressively check exercises of power by the other branches of government, but rather to play a facilitative and collaborative role in the pursuit of good governance in Singapore. In a similar vein, the Singapore courts have a deep-seated inclination towards deference to the other branches of government in areas perceived to be beyond their traditional area of competence. They have expressed great reluctance to engage with issues they consider to be political or moral in nature, or which involve polycentric considerations, considering these issues to be beyond their institutional expertise and suggesting that the other branches of government are the more appropriate fora for the resolution of such matters. As such, given the scientific and technical nature of environmental governance, it is not unexpected that the Singapore judiciary has been reticent in this regard.\(^44\)

Specific to the topic at hand, it should be noted that there have been no recorded instances of any environmental lawsuits in Singapore filed by shareholders of corporations against directors for failing to take into account risks and threats to the environment arising from the actions of such corporations. This does not, however, mean that there is no basis for such actions to be filed in the interest of protecting the environment. The next section considers the prospects for such shareholder action in Singapore.

**Corporate Law Landscape in Singapore**

The regulatory framework for corporate governance in Singapore is underpinned by corporate law and securities regulations. These are reflected in common law rules as well as in statutory enactments such as the Companies Act 1967 and the Securities and Futures Act 2001. This is supplemented by quasi-legislative enactments such as the SGX-ST Listing Manual (SGX Listing Rules), which applies only to companies listed on the bourse of the Singapore Exchange Securities Trading Ltd (SGX-ST), and the Singapore Code on Takeovers and Mergers.

The scope for shareholder action is largely dependent on the duties of directors; these are examined below.

**Directors’ Duties and Shareholder Actions**

Directors in Singapore owe, *inter alia*, fiduciary duties, including the duty to act in good faith in the company’s best interests, and non-fiduciary duties of care, skill and diligence. It is apt to note that the common law best interest duty has not been codified in Singapore.

\(^44\) *Ibid*, 219-220.
Nevertheless, the duty to act honestly pursuant to section 157(1) of the Companies Act has been interpreted to be the equivalent of that duty. A combination of subjective and objective tests is employed for this purpose. This following extract best describes what this entails:

Thus, unlike Hong Kong law, Singapore law requires judges to objectively assess the directors’ subjective assertions if and when they claimed they have considered the company’s best interests. Accordingly, where directors have been alleged to have breached their duty for failing to consider or address climate-related risks, but directors made contrary subjective assertions, courts will evaluate these assertions from the standpoint of an intelligent and honest individual.

As for the application of this duty in a climate risk context, it has been noted that “in light of the well-established and widely publicized evidence demonstrating that climate-related risks (particularly physical and transition ones) can have an adverse and material impact on the business and operations of companies, which will affect their long-term financial performance, directors are and should be required under Singapore law, in their discharge of their common law duty to act *bona fide* in the best interests of the company and the statutory duty to act honestly under s 157(1), to take into account these climate-related risks in their decision-making process, insofar as these considerations have or are likely to have a material impact on the interests of shareholders, stakeholders or the corporate entity itself.”

The common law and statutory duty of care, skill and diligence – which can be seen as being related to the concept and issue of competence – requires directors to meet the minimum standard of skill and care expected of someone in their position and to apply their particular skills and experience to their tasks. A director who is more experienced or qualified is generally subjected to a higher standard of duty of care, skill and diligence.

As for the application of this duty in a climate risk context, directors must take into account applicable best practices, industry norms, and codes of conduct. It goes without saying that they are also obligated to comply with applicable laws and regulations. It has been observed that:

> [D]irectors of financial institutions, for example, will be expected to be aware of, and may be assessed in accordance with, the MAS [Monetary Authority of Singapore] environmental risk management guidelines as well.

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49 See section 157(1) of the Companies Act which requires directors to “use reasonable diligence in the discharge of the duties of his office”. 49
50 *Lim Weng Kee v Public Prosecutor* [2002] SGHC 193, [2002] 2 SLR(R) 848 at [28].
as the TCFD [Task Force on Climate-related Financial Disclosures] recommendations … for the purpose of determining the standard of care. … [F]or directors of non-financial institutions, even if the MAS and TCFD guidelines do not apply to them, there is a body of well-established evidence of climate-related risks to which directors cannot turn a blind eye. … [B]ecause the minimum standard of care varies with the precise functions assumed by the director as well as the size and nature of the company, the nature and extent of knowledge and the follow-up measures (particularly the internal system of monitoring and managing climate-related risks) that will be expected of directors will also vary. For example, in view of the guidelines on environmental risk management issued by MAS to banks, asset managers and insurers, the directors of these financial institutions are likely to be subject to a higher standard of care than other kinds of financial institutions. To be clear, it does not follow that a lower standard of care will be imposed on directors of non-financial institutions. After all, if the company in question belongs to the energy and resources sector, directors of these companies are arguably subject to a higher standard of care as these companies should face heightened transition risks to clean energy. Even if the company does not fall within those “high risk” sectors, if the director in question possesses special knowledge of climate-change, or if the director is a chair or member of the risk management committee, then that person will be subject to a higher standard of care.\(^\text{51}\)

Notwithstanding the above, it has been observed that “there are considerable doctrinal and practical difficulties in private enforcement of directors’ duties with regards to climate change, particularly for derivative actions and, to a lesser extent, oppression actions”.\(^\text{52}\) A key difficulty that shareholders are likely to face in this regard is the general reluctance of Singaporean courts to interfere with business decisions. For instance, in *ECRC Land Pte Ltd v Ho Wing On Christopher* the Singapore High Court observed:

\begin{quote}
The court should be slow to interfere with commercial decisions taken by directors […] It should not, with the advantage of hindsight, substitute its own decisions in place of those made by directors in the honest and reasonable belief that they were for the best interests of the company, even if those decisions turned out subsequently to be money-losing ones.\(^\text{53}\)
\end{quote}

That said, the test of determining whether a director had acted in the best interest of the company is still an objective one, which involves the notion of reasonableness.\(^\text{54}\) This means that Singapore’s informal business judgement rule is weaker than its


\(^{\text{53}}\) *ECRC Land Pte Ltd (in liquidation) v Ho Wing On Christopher* [2003] SGHC 298, [2004] 1 SLR(R) 105 [49].

\(^{\text{54}}\) *Intraco Ltd v Multi-Pak Singapore Pte Ltd* [1994] SGCA 142, [1994] 3 SLR(R) 1064 [29] (“An honest and intelligent man in the directors’ position, taking an objective view, could reasonably have concluded that the transactions were in [the Company’s] interests”).
counterpart in the United States.\textsuperscript{55} Be that as it may, it must be generally noted that the courts have set the bar high and that there are fairly onerous hurdles that have to be overcome.\textsuperscript{56}

**Securities Law**

Disclosure requirements and/or nudges pursuant to applicable securities law are another potential avenue whereby companies may be tasked to address climate risks. In the Singapore context, rule 703 of the Listing Manual of the Singapore Exchange (SGX), whilst not specifically targeted at or including references to climate change, can be seen to impose an obligation on companies to make appropriate disclosures of the climate risks they face. Separately, steps have also been taken by the Singapore Exchange to enhance the landscape undergirding sustainability reporting requirements:

[The SGX on 15 December 2021 announced a roadmap for SGX-listed companies to transition their climate-related disclosures towards the TCFD framework. Climate reporting would initially be on a ‘comply-or-explain’ basis for the financial year (FY) commencing 2022. Thereafter, it would be made mandatory sequentially for issuers in the (i) financial, (ii) agriculture, food and forest products, and (iii) energy industries from FY 2023. The (iv) materials and buildings, and (v) transportation industries must comply with such disclosure norms from FY 2024. The recent rounds of SGX reforms indicate that climate-related disclosures have received greater attention, with the introduction of a legal mandate as well as greater standardisation in line with the TCFD recommendations.\textsuperscript{57}]

**Conclusion**

Singapore’s journey from third world to first world is remarkable, and its progress towards environmental protection is an inspiring example. However, there is room for improvement in environmental litigation and shareholder action in the country. As one of the lowest-lying countries in the world, Singapore is susceptible to the impacts of climate change.

While Singapore generally scores well on various rankings measuring the city’s liveability and environment, there are no recorded instances of any environmental lawsuits in Singapore filed by shareholders of corporations against directors for failing to take into account risks and threats to the environment arising from the actions of such corporations.


\textsuperscript{56} For a selection of leading shareholder lawsuits in Singapore, see e.g. Ho Yew Kong v Sakae Holdings Ltd [2018] SGCA 33; [2018] 2 SLR 333; Over & Over Ltd v Bonvests Holdings Ltd [2010] SGCA 7; [2010] 2 SLR 776; Ezion Holding Ltd v Teras Cargo Transport Pte Ltd [2016] SGHC 175, [2016] 5 SLR 226.

There is potential for shareholder action in Singapore, and it is essential that corporate governance laws evolve to protect the environment. With an eye on its susceptibility to the impacts of climate change and the increasing need to adopt sustainable practices globally, Singapore must take proactive steps to balance its economic development with the protection of its environment.
Overview

Hong Kong is a special administrative region (SAR) of China and is situated on the east of the Pearl River estuary on the south coast of China. Hong Kong is bordered by Guangdong province to the north and the South China Sea to the east, south, and west. Hong Kong consists of the island of Hong Kong, Stonecutters’ Island, Kowloon Peninsula, and the New Territories on the adjoining mainland. With a total land area of 1,113.76 square kilometres and a population of approximately 7.41 million people, Hong Kong is one of the most densely populated areas in the world.

The effects of climate change have been felt in Hong Kong in various ways, such as ambient temperature abnormalities as well as an increased frequency of extreme climate events including tropical cyclones and rainstorm surges.

Hong Kong’s legal system has been described as a hybrid model. The constitutional framework for Hong Kong’s legal system is provided by the Basic Law enacted by the National People’s Congress in accordance with Article 31 of the Constitution of the People’s Republic of China. Pursuant to the principle of “one country, two systems”, the Hong Kong legal system differs from that of Mainland China; it is based on the common law and supplemented by statutes.

The relationship between the Basic Law and the environment has been described as follows:

In contrast to the Basic Law’s detailed provisions regarding Hong Kong’s economic affairs, the law makes only passing reference to Hong Kong’s environment. The Basic Law mentions Hong Kong’s natural environment three times: article 7 states that “[t]he land and natural resources within the Hong Kong Special Administrative Region shall be State property;” article 97 specifies that the SAR’s distinct organizations may be responsible for “environmental sanitation;” and article 119 instructs the SAR government to “formulate appropriate policies to ... pay regard to the protection of the environment”. None of these provisions signify substantial concern for the environment. Article 7 is intended to make clear that title in Hong Kong’s land shifted from the British Crown to the Chinese government, article 97 serves merely as an example of areas that may be delegated to district board control, and article 119’s mention of the environment follows a list of nine “trades” that Hong Kong is to promote. Nevertheless, article 119’s instruction that Hong Kong’s government should “pay regard to the protection of the environment” does establish that the Basic Law intends for local environmental lawmaking to be within the SAR’s sphere of autonomy.


Environmental Protection and Shareholder Actions

There have been no recorded instances of any environmental lawsuits in Hong Kong filed by shareholders of corporations against directors for failing to take into account risks and threats to the environment arising from the actions of such corporations. This does not, however, mean that there is no basis for such actions to be filed in the interest of protecting the environment. The next section considers the prospects for such shareholder action in Hong Kong in the context of the environment.

Corporate Law Landscape in Hong Kong

The regulatory framework for corporate governance in Hong Kong is underpinned by corporate law and securities regulations. These are reflected in common law rules as well as in statutory enactments such as the Companies Ordinance (cap 622) and the Securities and Futures Ordinance (cap 571). This is supplemented by quasi-legislative enactments such as the Hong Kong Stock Exchange (HKSE) Listing Rules, which applies only to companies listed on the bourse of the HKSE.

The scope for shareholder action is largely dependent on the duties of directors; these are examined below.

Directors’ Duties and Shareholder Actions

Directors in Hong Kong owe, inter alia, fiduciary duties including the duty to act bona fide in the best interests of the company and non-fiduciary duties of care, skill, and diligence. The common law duty to act bona fide in the best interests of the company has not been codified in Hong Kong. This duty has been described as encompassing the following elements:

Courts will apply a subjective test to good faith, but courts will not blindly accept the directors’ assertions if these are contradicted by the evidence before it. For example, if the directors asserted that they honestly believed that their decision not to address the company’s stranded assets was in the company’s best interests, despite the evidence of climate-related risks impacting on the company’s financial interests, the directors are unlikely to have met the subjective test. To be clear, under Hong Kong law, courts will not assess the directors’ assertions based on objective grounds; they will only do so if the directors have not even considered the company’s best interests in the first place.62

As for the application of this duty in a climate risk context, it has been noted that “in light of the well-established and widely publicised evidence demonstrating that climate-related risks (particularly physical and transition ones) can have an adverse and material impact on the business and operations of companies, which will affect their long-term financial performance, directors are and should be required under Hong Kong law, in their discharge of their common law duty to act *bona fide* in the best interests of the company, to take into account these climate-related risks in their decision-making process, insofar as these considerations have or are likely to have a material impact on the interests of shareholders”.

Section 465(1) of the Companies Ordinance specifies that “[a] director of a company must exercise reasonable care, skill and diligence”. Section 465(2) then goes on to provide that “[r]easonable care, skill and diligence mean the care, skill and diligence that would be exercised by a reasonably diligent person with – (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and (b) the general knowledge, skill and experience that the director has”.

This statutory duty of care, skill, and diligence – which can be seen as being related to the concept and issue of competence – requires directors to meet the minimum standard of skill and care expected of someone in their position and to apply their particular skills and experience to their tasks. A director who is more experienced or qualified is generally subjected to a higher standard of duty of care, skill, and diligence.

As for the application of this duty in a climate risk context, it has been observed that:

> The statutory duty to exercise reasonable care, skill and diligence is applicable to the climate risk context in at least five respects: risk management; due diligence; supervision of delegated responsibilities; the duty pertaining to financial statements; and accurate and adequate disclosures.

Notwithstanding the above, and similar to the position in Singapore (as described earlier), the landscape in Hong Kong is also one where “there are considerable doctrinal and practical difficulties in private enforcement of directors’ duties with regards to climate change, particularly for derivative actions and, to a lesser extent, oppression actions”. As with Singapore, Hong Kong has its own version of the business judgement rule, which, although not codified under the Companies Act, may still pose a hurdle to shareholders.

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Securities Law

Disclosure requirements and/or nudges pursuant to applicable securities law are another potential avenue whereby companies may be tasked to address climate risks:

In Hong Kong, the Listing Rules of the HKEX require companies to report on ESG matters at two levels: (i) certain mandatory disclosure requirements; and (ii) other ‘comply-or-explain’ provisions. Under the mandatory disclosures, companies’ statements must contain the board’s oversight of ESG issues, the board’s management approach and strategy, and the board’s review of progress made against ESG-related issues. Furthermore, the ‘comply-or-explain’ approach requires issuers to address environmental matters such as ‘air and greenhouse gas emissions, discharges into water and land, and generation of hazardous and non-hazardous waste’. More specifically, the climate change disclosure provides for ‘policies on identification and mitigation of significant climate-related issues’ impacting the issuer’ and a discussion on ‘the significant climate-related issues which have impacted, and those which may impact the issuer, and the actions taken to manage them.’

While ESG disclosures have already gained a sufficient grip in Hong Kong, more recent reforms have sought to strengthen them further, especially on the climate front. HKEX’s consultation in April 2021 aimed to establish a greater linkage between ESG considerations and corporate governance more generally, thereby signifying a greater weight for ESG disclosures. In these proposals, climate-related risks received utmost priority, as they ‘are increasingly cited as a major priority on the global agenda’. Following such consultation, HKEX has, with effect from 1 January 2022, required companies to make ESG disclosures (including on climate change-related information) available to stakeholders at the same time as the publication of the annual reports. These changes also drew inspiration from the Green and Sustainable Cross-Agency Steering Group’s announcement seeking to make progress towards mandatory climate-relate disclosures that are aligned with the TCFD recommendations, and supporting the efforts of the IFRS Foundation to develop a new standard built upon the TCFD recommendations. Following this, the HKEX in November 2021 issued a ‘Guidance on Climate Disclosures’, which offers ‘practical guidance to facilitate listed companies in complying with the TCFD recommendations’. These measures not only have the effect of converting climate-related disclosures from ‘comply-or-explain’ to a legal mandate over time, but they also result in standardisation of the reporting requirements thereby making cross-company comparisons more meaningful.67

Conclusion

While Hong Kong’s legal system is based on the common law and supplemented by statutes, its constitution provides only passing reference to the environment. Despite this, the Basic Law does instruct the SAR government to “formulate appropriate policies to ... pay regard to the protection of the environment”. This means that local environmental lawmaking is within the SAR’s sphere of autonomy. That said, there have been no recorded instances of any environmental lawsuits in Hong Kong filed by shareholders of corporations against directors for failing to take into account risks and threats to the environment arising from the actions of such corporations.

Given the regulatory framework for corporate governance in Hong Kong, underpinned by corporate law and securities regulations, there is scope for shareholder action in Hong Kong. With the duty of directors to act *bona fide* in the best interests of the company and to exercise reasonable care, skill, and diligence, there is potential for law reforms in Hong Kong that place a greater emphasis on the environment, particularly in the context of climate change. It is essential for Hong Kong to step up its efforts in protecting the environment to ensure a sustainable future for its citizens.
Country-Specific Reports

Indonesia
Overview

Indonesia is a Southeast Asian country with a population of over 270 million people. It is the fourth most populous country in the world and has the largest economy in Southeast Asia. Indonesia faces several challenges related to environmental degradation and pollution, particularly in urban areas.

Indonesia’s legal system is based on the civil law tradition, which means that the legal system is primarily based on written law rather than judicial precedent. Indonesia’s constitution recognises the right to a healthy environment as a fundamental right – it provides that “[e]very person is entitled to live prosperous physically and spiritually, to have a place to reside, and to acquire a good and healthy living environment as well as be entitled to obtain health care”.

In addition to the constitutional provision, Indonesia has enacted several environmental laws that regulate developmental activities. The Environmental Management Law is the primary legislation that sets out environmental standards and requirements for developmental activities. This law establishes a legal framework for environmental impact assessments (EIAs) that are required for certain types of projects. The EIA process requires developers to identify and assess the potential environmental impacts of their projects and to develop measures to mitigate these impacts.

In 2009, a more robust law was enacted, establishing a legal framework for environmental protection and management in Indonesia. The law aims to promote sustainable development by regulating the use of natural resources and preventing pollution, requiring government and private entities to take responsibility for environmental protection and restoration, and establishing a framework for environmental impact assessments and permits for activities that may have a significant impact on the environment. Furthermore, it provides for the establishment of a National Council on Climate Change to coordinate efforts to address climate change.

Indonesia has also enacted specific laws to address certain environmental issues, such as the Law on Water Resources Management and the Law on Forest Management. These laws provide for the protection and sustainable management of water resources and forests, respectively.

Despite these laws, Indonesia continues to face significant environmental challenges. Deforestation, air pollution, and marine pollution are some of the most pressing environmental issues in the country. The Indonesian Government has taken steps to address these challenges – for example, by imposing restrictions on new palm oil
plantations\textsuperscript{73} and committing to a 29% reduction in greenhouse gas emissions by 2030.\textsuperscript{74} However, the implementation and enforcement of environmental laws and regulations remain a challenge.

### Environmental Cases

There have been a number of environment-related lawsuits in Indonesia\textsuperscript{75} of which some have been filed by the state against corporations. For instance, in one case, the Indonesian Government brought a tort-based action against a company\textsuperscript{76} for clearing and burning forest land without the necessary permits. The company denied the allegations and argued that they had followed all legal procedures. The case ultimately went up to the Supreme Court, which ruled in favour of the Indonesian Government; the company was ordered to pay a fine and restore the affected area.

In a similar case,\textsuperscript{77} the Indonesian Government sued two companies for damage caused by illegal mining activities. Although the case was decided against the Indonesian Government at all levels, the Ministry of Environment and Forestry filed a request for extraordinary review (\textit{peninjauan kembali}) in the Supreme Court and provided new evidence that the conduct of the two companies was illegal. Ultimately, the Supreme Court reviewed its earlier decision and awarded the Indonesian Government full restoration costs.

A more recent example is the lawsuit by the Indonesian Government against a company\textsuperscript{78} for environmental harm caused by fires that resulted from the company’s activities in preparing peatlands for palm cultivation. The District Court of Central Jakarta decided to grant the Indonesian Government damages and restoration costs amounting to IDR 137 billion.

Aside from state-led litigation, there has also been a proliferation of public interest litigation (PIL) against corporations filed by environmentalists and NGOs. These cases have played a key role in ensuring that actions of corporations that harm the environment are kept in check. The PIL case filed against the Indonesian subsidiary of the Newmont Mining Corporation, a foreign mining company, for allegedly polluting \textit{Buyat Bay} with...
heavy metals was one of the earliest cases of this kind, although this case was ultimately decided in favour of the company.

While a sizable number of environment-related cases have been filed against corporations in Indonesia, the rate of success of such cases has been relatively low – often requiring the claimant to fight the case all the way up to the Supreme Court. None of those cases represent actions by shareholders of companies suing their directors.

Corporate Law Landscape in Indonesia

Indonesia’s corporate law is primarily governed by the Company Law No. 40 of 2007 (the “Company Law”), which regulates various aspects of company incorporation, governance, and operations. Under the Company Law, companies are required to comply with legal provisions, including fulfilling their corporate social and environmental responsibilities. Directors and commissioners are obligated to act in good faith and in the best interests of the company. They are also required to act with due care, skill, and diligence, and to disclose any potential conflicts of interest. However, there is currently no specific requirement for directors to consider or account for climate change and environmental risks and threats brought about by the operation of companies.

Companies are classified as either a Perseroan Terbatas (PT) or Perseroan Terbatas Penanaman Modal Asing (PT PMA) based on the shareholding structure. A PT is a limited liability entity with only Indonesian shareholders, while a PT PMA is a foreign-owned company. There are special regulations and laws that apply to companies, including publicly listed companies, which require them to disclose their CSR policies or environmental and climate impact and risk assessments. Article 74 of the Company Law and the implementing regulation require companies in the natural resources sector to fulfill corporate social and environmental responsibilities. Public or listed companies must also submit a report on corporate social responsibility according to the Financial Services Authority Regulation, which can be done in their annual reports. State-owned enterprises must implement an environmental programme as well as a partnership programme with a small enterprise under the Minister of State-Owned Enterprises Regulation. Lastly, PTs (limited liability entities) and PT PMAs must implement corporate social and environmental responsibility initiatives under Law No. 25 of 2007 on Investment. Non-compliance with these regulations can result in sanctions, such as limitations on business activities and the revocation of business or investment licenses.

In addition to the aforesaid regulations, there are also other laws that impose specific obligations on companies. For example, Law No. 32 of 2009 on Environmental Protection and Management requires companies to conduct an environmental impact assessment.

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79 Yayasan Tambuhak Sinta v PT Newmont Minahasa Raya Decision No 07/Pdt.G/2005/PN.Jkt.Pst (Central Jakarta District Court).
81 Government Regulation No. 47 of 2012 on Corporate Social and Environmental Responsibility.
before commencing any development activities. This assessment must take into account
the potential impact of the development on the environment and local communities.

Despite the existence of these laws and regulations, compliance and enforcement of
environmental and social responsibility requirements remain a challenge in Indonesia. This
is due to the complex nature of the regulatory framework and the lack of clear guidelines
and standards for compliance. There are also concerns about the effectiveness of
enforcement measures, particularly in the face of the significant influence that corporations
exert in Indonesia’s political and economic landscape. As such, there is good reason to
explore the scope and viability of shareholder-led actions to hold directors of corporations
accountable in dealing with climate change and environmental impact.

Directors’ Duties and Shareholder Actions

Directors’ duties in Indonesia are similar to those in other jurisdictions. Article 92(1) of the
Company Law provides for the duty to act in the best interest of the company. The provision
reads as follows:

The Board of Directors shall undertake its duty to manage the Company
for the interest of the Company in the pursuit of its purposes and
objectives.

Article 97 of the Company Law provides further as follows:

(1) The Board of Directors shall be responsible for the management of the
Company as referred to in Article 92 paragraph (1).
(2) The management as referred to in paragraph (1) shall be performed by
each member of the Board of Directors with good faith and full
responsibility.

The provisions of Article 92(1) and Article 97(1) of the Indonesian Company Law set out the
duties and responsibilities of the Board of Directors in managing the company. These
provisions require the Board to act in the best interest of the company in pursuit of its
purposes and objectives, and to be responsible for the management of the company.

While the Indonesian Company Law does not specifically mention CSR or climate and
environmental risks, it can be argued that the duties and responsibilities of the Board of
Directors encompass these aspects. The Board of Directors has a fiduciary duty to act in
the best interest of the company, which includes considering the long-term sustainability
of the company’s operations.

In addition, the Indonesian Government has issued regulations and policies related to
environmental management and sustainability, including the Ministry of Environment and
Forestry Regulation No. 13/2012 on Guidelines for the Implementation of Sustainable
Environmental Management and the Indonesian Financial Services Authority (OJK)
Regulation No. 51/POJK.03/2017 on the Implementation of Sustainable Finance for Financial
Services Institutions. These regulations require companies to consider environmental risks and implement sustainable practices in their business operations.

Implementing CSR initiatives and taking into account climate and environmental risks can be seen as integral to ensuring the long-term sustainability of a company. Furthermore, Article 97(2) emphasizes that the management of the company must be performed with good faith and full responsibility, which could be interpreted as requiring the Board to take into account any risks that may impact the company’s operations in the future. Therefore, although the Indonesian Company Law does not explicitly require directors to implement CSR or take into account climate and environmental risks, it can be interpreted as implicitly obliging directors to do so in the pursuit of their duties and responsibilities to manage the company in its best interest.

Shareholders of companies have the right to initiate legal action against the directors when they fail to fulfill their legal duties and responsibilities. Shareholders can file a lawsuit in court to seek remedies for any breach of duty or violation of the law by the directors. However, whether shareholders can file a legal action against directors for failing to implement CSR or take into account climate and environmental risks will depend on the specific circumstances of the case. If the failure to implement CSR or address climate and environmental risks results in harm or financial losses to the company, then shareholders, subject to a high minimum shareholding requirement, may have a basis to file a legal action against the directors for breaching their duty of care, loyalty, or good faith. This is made clear when Article 97(6) provides:

On behalf of the Company, the shareholders representing at least 1/10 (one-tenth) from the total number of shares with voting right, may submit a claim to a District Court against a member of the Board of Directors which causes loss to the Company due to their fault or negligence.

Also, it is important to note that the extent of a director’s duty to consider CSR and environmental risks will depend on various factors, including the nature and size of the company, the industry in which it operates, and the specific risks and opportunities faced by the company. Therefore, in order to succeed in any legal action, shareholders will need to establish that the directors’ actions or omissions were not in the best interest of the company and that they have thus breached their legal duties. Indeed, Article 97(5) provides that a member of any Board of Directors shall not be liable for any loss caused to the company if it is established, among other things, that the loss is not a result of any fault or negligence on the part of that member, or that the member acted in good faith and in the best interest of the company. It has been suggested that this introduces notions of the business judgement rule, although here the burden is on directors to establish their entitlement to its benefit.82

82 Soonpeel Edgar Chang, Indonesian Company Law (Routledge, 2018), 110.
As such, shareholders have the right to take legal action against directors if they can establish that the directors have breached their legal duties (by establishing some form of fault or negligence or failure to act in the best interest of the company), including failing to implement CSR or address climate and environmental risks, provided that they can demonstrate that such failure resulted in harm or financial losses to the company. Essentially, the shareholder action must be based on losses or the interests of the company and cannot be pursued on any other ground.

**Conclusion**

In conclusion, Indonesia has enacted several environmental laws and regulations to address environmental degradation and pollution, but the implementation and enforcement of these laws remain a challenge.

Environmental lawsuits, including those initiated by the state and public interest litigation filed by environmentalists and NGOs, have played an essential role in holding corporations accountable for their environmental impacts. However, there have been no cases of shareholders suing directors over environmental concerns.

The Indonesian Company Law requires directors and commissioners to act in good faith and in the best interests of the company, with due care, skill, and diligence, and to disclose any potential conflicts of interest. However, the provisions dealing with directors’ duties do not explicitly require directors to address climate risks or implement corporate social responsibility (CSR) initiatives. Notwithstanding that, shareholders may have the potential to initiate legal action against directors if they can demonstrate that the failure to address climate risks and environmental impact has resulted in harm or financial losses to the company. To succeed in such litigation, shareholders would need to establish that the directors have breached their legal duties, such as acting without due care or failing to act in the best interest of the company, and provide evidence of the negative consequences to the company caused by their inaction.

Shareholder litigation and activism could play a significant role in driving companies to address climate and environmental concerns, and shareholders could use their influence to push directors to consider these concerns in their decision-making processes. Ultimately, corporations and directors have a duty to protect the environment and ensure sustainable development.
Country-Specific Reports

Australia
Overview

As a federation (the “Commonwealth”) comprising six states and two territories, Australia has a national federal parliament with the “exclusive power to make laws for the peace, order, and good government of the Commonwealth” for specified matters pursuant to the Commonwealth Constitution Act. However, the federal parliament has not expressly been granted direct legislative powers for environmental management and protection.

Environmental protection has traditionally been the province of state and territory governments, although the federal parliament may exercise its powers for environmental reasons. As such, any single environmental issue may be subject to regulation at both the state and federal level. The Commonwealth may avoid unnecessary duplication of effort by delegating environmental assessment processes to a state.

Given that the Commonwealth may exercise its powers for environmental reasons, the federal parliament has successfully enacted legislation addressing a wide variety of issues, including:

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<th>Act</th>
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<tr>
<td>Environmental Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act)</td>
<td>Protection of “matters of national environmental significance”, including: (1) world heritage properties; (2) national heritage places; (3) wetlands of international importance; (4) listed threatened species and ecological communities; (5) listed migratory species; (6) protection of the environment from nuclear actions; (7) Commonwealth marine areas; (8) the Great Barrier Reef Marine Park; and (9) water resources in relation to large coal mining and coal seam gas developments.</td>
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83 Commonwealth of Australia Constitution Act 1990 (Cth), s 51.
85 Ibid.
86 Ibid.
87 Environmental Protection and Biodiversity Conservation Act 1999 (Cth), s 3(f)(a).
88 Ibid, Division 1.
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<th>Act</th>
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<td>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</td>
<td>Establishment of controls over the manufacture, import, and export, distribution, of ozone depleting substances and synthetic greenhouse gases, as well as equipment that contains or uses such substances. 89</td>
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<tr>
<td>National Greenhouse and Energy Reporting Act 2007 (Cth) (NGER Act)</td>
<td>Establishment of a national reporting framework for the reporting and dissemination of information relating to greenhouse gas emissions, greenhouse gas projects, energy consumption, and energy production of corporations. 90</td>
</tr>
<tr>
<td>Biosecurity Act 2015 (Cth)</td>
<td>Management of diseases and pests that may harm the environment or human, animal, or plant health. 91</td>
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Breaches of environmental laws may be subject to public and private enforcement. Regulators may enforce environmental laws by: (1) issuing administrative orders (e.g. environmental protection orders); (2) prosecuting offenders (i.e. criminal proceedings); and (3) civil remedies (e.g. injunctions, damages). The remedies available under public enforcement will depend on the applicable legislative regime. 92

Private citizens may also enforce environmental laws by: (1) seeking civil remedies against wrongdoers; and (2) prosecuting offenders (i.e. criminal proceedings). Members of the public or citizens may also challenge decisions made by ministers, government agencies, or public officials through: (1) seeking judicial review; and (2) appealing the merits of a decision. 93

However, private and public enforcement of environmental legislation alone may not be sufficient to address the wide range of environmental harms caused by businesses and corporate activity. Where corporate decisions have an impact on the environment, it may be far more effective to address the root of the problem – that is, the corporate decision-makers themselves.

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89 Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth), s 3.
90 National Greenhouse and Energy Reporting Act 2007 (Cth), s 3(1).
91 Biosecurity Act 2015 (Cth), s 3.
93 Ibid, para 12.1.
Australia’s corporate law regime offers a range of tools that shareholders may use to hold directors and officers accountable for climate change and environmental issues; these are discussed in the following section.

**Corporate Law and the Environment**

**Directors’ Duties**
The Board of Directors has the power to manage the business of a company. The Board’s management powers extend to a wide variety of matters, ranging from the company’s long-term business strategy to its day-to-day operations.

While shareholders may disagree with the directors’ decisions, management decisions are generally the sole province of the Board of Directors, and there are limited avenues for shareholders to challenge management decisions. Only decisions about the ultimate control of the company are to be made by the shareholders in the general meeting. Important decisions for shareholders include the appointment and removal of directors.

Directors owe duties to the company pursuant to the Commonwealth Corporations Act 2001 (Cth) (Corporations Act), and in their capacity as fiduciaries. As fiduciaries, directors are required to avoid placing themselves in a position where their personal interest or duty is in conflict with their duty to the company. Directors must also not misappropriate company property or usurp corporate opportunities. The Corporations Act expressly provides for several key duties and obligations, including the duty to act for a proper purpose, rules governing conflict of interests, and related party transactions.

Where environmental issues are concerned, the two most important duties owed by directors are: (1) the statutory duty of care under section 180; and (2) the statutory duty to act in good faith in the interests of the company under section 181(1)(a) of the Corporations Act (“statutory good faith duty”).

Recent jurisprudence on the statutory duty of care suggests that directors who make decisions that incur significant non-financial risks – such as intentionally discharging large volumes of toxic waste – may breach their duty of care. A leading Australian scholar has suggested that consideration of such non-financial risks may apply with equal force to a

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94 Corporations Act 2001 (Cth), s 198A.
95 Ibid, s 181(1)(b).
97 Ibid, Part 2.E.
98 Australian Securities and Investments Commission v Cassimatis (No 8) [2016] FCA 1023, [485] (“For instance, suppose a director makes a decision to commit a serious breach of the law, by intentionally discharging large volumes of toxic waste. Suppose the decision is made on the basis that the financial cost of avoiding the breach would be far greater than the cost of a pecuniary penalty under the relevant environmental regulation. This conduct might nevertheless involve a breach of the director’s duty of care and diligence, irrespective of any other breaches. In other words, the director might not avoid liability merely because he or she proved that a balancing exercise showed that the likely financial cost of a penalty was exceeded by the likely profit from a serious contravention of the law”).
director’s statutory good faith duty.99 This represents a departure from the traditional approach to the statutory good faith duty, where the “interests of the company” requirement was interpreted to mean the “financial well-being of the shareholders as a general body”,100 with little solicitude offered to stakeholders or the environment. Shareholder activism on environmental issues may generate new opportunities for the Australian courts to conclusively decide whether decisions that result in harm to stakeholder and environmental interests should amount to a breach of the statutory good faith duty.

Where a director breaches their duties under the Corporations Act, they may be subject to civil penalties, criminal liability, and/or be required to compensate the company or others for losses caused. Breaches of fiduciary duties may result in personal liability for the director in the form of monetary compensation or proprietary remedies. The court has the discretion to grant relief to directors for breaches of duty in cases where the director acted honestly, and having regard to all the circumstances of the case, ought fairly to be excused.101

The Australian Securities and Investment Commission (ASIC) has the power to enforce the Corporations Act, and is responsible for public enforcement of breaches of directors’ duties.102 Directors’ duties may also be privately enforced by the company itself, or by shareholders through a derivative action.103

**Corporate Disclosure and Reporting Requirements**

The Corporate Governance Principles and Recommendations, which apply to all companies listed on the Australian Securities Exchange (ASX), require companies to disclose under Recommendation 7.4 “whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks”.104 Disclosure is to be made on an “if not, why not” basis; companies do not need to produce a sustainability report or an integrated report to satisfy this requirement.105 As of the time of writing (in 2023), the ASX has not imposed any mandatory sustainability reporting requirements on ASX-listed companies.

Companies may also be subject to sector-specific requirements. For example, the NGER Act prescribes that specified companies are required to issue reports on their greenhouse gas emissions and other data on an annual basis.106

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101 Corporations Act 2001 (Cth), s 1318.
102 Ibid, ss 1315, 1317E.
105 Ibid.
106 National Greenhouse and Energy Reporting Act 2007 (Cth), Parts 3, 3E, 3F, and 3G.
Environmental and Climate Change Litigation

There are at least three significant cases brought by shareholders against Australia-incorporated companies on environmental and climate change issues.

The first is the 2015 case of Australasian Centre for Corporate Responsibility (ACCR) v Commonwealth Bank of Australia (CBA). The ACCR describes itself as “a research and shareholder advocacy organisation” that “focus[es] [on] engaging with investors on how listed companies, industry associations, and other entities are managing climate, labour, human rights and governance issues”.

The ACCR filed an application against CBA seeking declarations that their proposed resolutions relating to greenhouse gas emissions could be validly moved at the annual general meeting of the CBA pursuant to section 249N of the Corporations Act. However, the Federal Court of Australia rejected the proposed resolutions under the Corporations Act as it found that shareholders do not have the authority to propose resolutions that relate to the management of a company unless the company’s constitution so allows. This decision makes it harder for shareholders who own (and ultimately control) companies to hold the company accountable for harm caused to the environment or other conduct that is not in the best interests of their shareholders or the community.

In the 2017 case of Abrahams v Commonwealth Bank of Australia (CBA), shareholders filed a suit against the CBA with the Federal Court of Australia, alleging that that the bank contravened the Corporations Act with the issuance of its 2016 Annual Report, which had failed to disclose business risks related to climate change. The 2016 Annual Report included a financial report as well as the directors’ annual report. The plaintiff-shareholder claimed CBA had: (1) breached section 297 of the Act, which required the financial report to “give a true and fair view of the financial position and performance of CBA”; and (2) breached section 299A(1) of the Act, which required the directors’ annual report to “contain information that members of CBA (CBA’s Members) would reasonably require to make an informed assessment of: the operations of CBA; the financial position of CBA; and the business strategies, and prospects for future financial years, of CBA”. The case was settled and CBA issued a 2017 Annual Report with further disclosures of their climate change risks.

A similar case was brought by the same shareholders in 2021 against CBA. In *Abrahams v CBA*, the plaintiff-shareholders filed an application with the Federal Court of Australia pursuant to section 247A to inspect specific documents relating to the financing of oil and gas projects by CBA. The stated purpose of the inspection was to assess whether: (1) the said projects were aligned with the goals of the Paris Agreement; and (2) the projects’ environmental, social, and economic impacts were assessed according to CBA’s own policies.\(^{112}\) The case was settled with CBA agreeing to grant the plaintiff-shareholders access to part of the requested documents on a confidential basis.\(^ {113}\)

It should be noted that the latter two cases – which arguably ended up as victories for the plaintiff-shareholders – do not set legally binding precedents as they were ultimately settled by the defendant corporation. The defendant corporation’s concession by settlement and implementation of policies may be interpreted as a strategic move to avoid a negative legal precedent, and the inspection by the shareholder on a confidential basis that was the subject of the settlement in the latest case still does not firmly establish the inspection mechanism as a means of verifying compliance by corporations with their climate change commitments – which were, in the CBA cases, voluntary anyway. Nonetheless, the Australian cases suggest that shareholder actions are, for now, still a potential avenue for pressuring corporations to take climate change seriously.

**Conclusion**

While the Australian Government has the power to make laws for the “peace, order, and good government” of the Commonwealth, environmental protection has traditionally been the responsibility of state and territory governments. The federal Parliament has enacted legislation addressing a range of environmental issues, and breaches of environmental laws may be subject to public and private enforcement. However, where corporate decisions have an impact on the environment, it may be far more effective to address the root of the problem – that is, the corporate decision-makers themselves.

Australia’s corporate law regime offers a range of tools that shareholders may use to hold directors and officers accountable for climate change and environmental issues. The discussion of directors’ duties in the context of environmental issues highlights the importance of considering non-financial risks and may offer new opportunities for the Australian courts to provide further guidance on the statutory duty of care and the statutory duty to act in good faith in the interests of the company.


General Conclusion

The objective of this study was to survey the laws of selected jurisdictions in the Asia-Pacific region regarding directors’ duties and the obligations of corporations in addressing climate change and environmental risks and threats. This comparative analysis aimed to determine the viability of shareholder litigation concerning climate change and the environment and to explore alternative means for shareholders to influence corporate policy in these areas. Additionally, the study looked for evidence of specific instances of non-legal action taken by shareholders in the identified Asia-Pacific jurisdictions.

The following general conclusions can be drawn from the material that was considered for the purposes of this study.

First, in some of the selected jurisdictions, there were strong constitutional frameworks that either expressly or implicitly recognised the human right to a healthy environment. In those jurisdictions, such constitutional frameworks have facilitated the enactment of specific laws that exclusively deal with the protection of the environment. It is within such contexts that aggrieved parties, and public-spirited citizens and organisations, have commenced action against government entities when they act or omit to act in furtherance of the human right identified above.

While the prevalence of fundamental rights litigation that pursues the protection of the right to a healthy environment varies across the jurisdictions surveyed, some clearly stand out in this area. Cases have been filed against the state and government entities that fail to adhere to acceptable norms and practices in dealing with corporations – e.g. in granting licences or approvals to engage in developmental activities. However, as of the time of writing, there does not appear to be clear evidence of systematic influence from the respective national-level human rights/constitutional law regimes on corporations insofar as shareholder litigation is concerned.

The comparative analysis conducted in this study revealed that all the jurisdictions surveyed had reasonably comprehensive legal frameworks for the protection and conservation of the environment. However, the material consulted for this study also revealed that in jurisdictions such as India and Indonesia, there was a gap between environmental laws as they appear in the statute books and the manner in which such laws operate in practice – i.e. the enforcement of the law. For various reasons, including perceived corruption as well as the lack of capacity or expertise required within public institutions, it has been suggested that the enforcement of environmental laws has been inadequate.

Given the limitations of public enforcement, the proposition that change should also come from within corporations gains force. Shareholders – who are corporate insiders and
possess the ability to influence internal policies and decisions – have the potential to create impact on corporate responses to environmental and climate change risks, and thus occupy an important space.

As noted in the introduction to this Report, shareholders may exert influence in numerous ways. Litigation is one avenue, and a highly visible one, for exerting such influence. However, this study revealed that despite the value and imperative of shareholder litigation when it comes to influencing internal policy and decisions concerning climate risks and environmental impact, domestic laws (in the jurisdictions surveyed) dealing with companies and the duties of directors do not readily equip shareholders to bring such actions. The study revealed three key obstacles to this endeavour.

The first concerns lack of standing. Shareholders may face challenges in establishing standing to bring lawsuits against corporate directors, as plaintiff-shareholders often need to demonstrate a financial interest in the matter. Additionally, there may be specific legal requirements or procedural hurdles that shareholders must meet or overcome before initiating litigation, such as exhaustion of internal remedies or obtaining a high minimum threshold of shareholding.

The second obstacle arises from the limited scope of shareholder litigation. The scope of shareholder litigation under company law may be limited to harm or damage caused to the interests of the company and its shareholders. This narrower focus – which is often limited to financial interests – may make it challenging for shareholders to bring lawsuits solely based on the broader environmental or societal impact of a corporation’s activities.

A third obstacle relates to the challenges of establishing a causal link between a company’s conduct, its impact on climate change or the environment, and harm caused to the company and/or shareholders. Unlike in cases where a company is sued under environmental or criminal laws for its harmful impact to the environment (e.g. for causing pollution), in cases brought by shareholders, there is a requirement to establish that the harm caused to the environment has or is likely to cause loss or damage to the company and its shareholders. Lack of access to internal corporate information in some jurisdictional regimes does not alleviate the information asymmetry problem faced by plaintiff-shareholders.

There are further considerations not examined in depth in this Report. One would be legal-doctrinal protections for directors engaging in business decision-making that insulate them – to varying extents – from judicial scrutiny of their decisions. This can pose further obstacles to plaintiff-shareholders hoping to establish a breach of a director’s duty to exercise care or to act in the interests of the company.

Another heavily jurisdiction-specific consideration is litigation costs. Not all court systems are comparably efficient or cost-effective; the remuneration of litigation practitioners also varies widely, as does the costs regime (e.g. English-style “loser pays winner’s fees including cost of lawyers’ fees” or the more common “each bears their own lawyers’ fees”). Depending
on the level of financial resources available to plaintiff-shareholders, the idiosyncrasies of each jurisdiction’s civil litigation system can present distinct challenges that are beyond the scope of this Report.

Moreover, a rapidly developing space that may have an impact on shareholder actions and litigation is that of reporting requirements. Initiatives on ESG/sustainability reporting at the national level are underway in several jurisdictions — although not always at the pace experienced by jurisdictions such as France, Germany, or the European Union. Reporting requirements could generate evidence relevant for regulatory action and potentially catalyse shareholder litigation by making more information accessible. How this would interact with corporate law doctrine on directors’ duties is a rapidly developing and complex area that is beyond the scope of this Report.

Given the ever-increasing awareness of and interest in holding corporations accountable for environmental and climate change related impact, the calculus for shareholders may — notwithstanding the obstacles identified above and others — shift in favour of commencing litigation as a means of managing corporate exposure to potential liabilities. Depending on the resources and motivations of shareholder-plaintiffs, even actions unsuccessful on the legal merits may be perceived as moral victories and spark further attempts.

It is also likely that shareholders may pursue non-litigation-based avenues, such as shareholder engagement through proposing resolutions or other forms of activism. Whether these emerge as positive developments, and how states should respond to such actions, would turn on each jurisdiction’s regulatory priorities, institutional capacity, and interest group dynamics; certainly, this merits further sustained research.
Key Recommendations

01 Companies should improve transparency and reporting on environmental impacts and risks. This will help increase shareholder awareness and engagement in environmental issues and provide shareholders with the information necessary to hold directors accountable for environmental harm.

02 Shareholders would benefit from greater education about their rights to hold directors accountable for environmental harm. Interested stakeholders could contribute to this by providing information and education to shareholders on their rights and the legal frameworks available to them for taking legal action against corporations.

03 States should be encouraged to review the scope of directors’ duties under their company laws to determine how environmental considerations should feature in framing and applying these duties.

04 States should be encouraged to review their company laws to clarify or expand the scope for shareholder litigation to include harm caused to the environment, beyond just the interests of the company and/or shareholders. This will help empower shareholders to take legal action against corporations that engage in environmental harm and increase the number of shareholder lawsuits from their current zero or near-zero level.

05 Jurisdictions in the Asia-Pacific (and perhaps beyond) may find the legal and regulatory landscape in Australia instructive for the purposes of understanding why it has been relatively conducive to shareholder lawsuits relating to climate change and the environment. This may help identify legal frameworks, judicial attitudes, or cultural factors that could be applied in other jurisdictions to facilitate shareholder lawsuits in this area.
Shareholder activism should never be treated as an adequate substitute for government intervention and public enforcement of environmental laws and policies. Governments continue to play a vital role in the enforcement of environmental protection laws. This will help provide a stronger regulatory framework for holding corporations accountable for environmental harm.

Further research should be undertaken to determine:

- the limitations of employing corporate law as a means of addressing concerns relating to climate change and the environment; and
- the proper allocation of responsibilities and the interactions between different areas of law and legal actors.

The above recommendations are primarily aimed at improving transparency, education, enforcement, and legal frameworks to empower shareholders to hold corporations accountable for environmental harm.

Shareholders, companies, and governments can, by implementing these recommendations, contribute to protecting the environment, reducing the impact of climate change, and ensuring that corporations are held responsible for their actions.
Shareholder Litigation in Response to the Climate Emergency and Human Right to a Healthy Environment in Asia and the Pacific

References


Bates G, Environmental Law in Australia (10th edn, LexisNexis Butterworths, 2019)


Chang SE, Indonesian Company Law (Routledge, 2018)


Chng K, “Conceptualising a role for the common law in environmental protection in Singapore” (2021) 16 Asian Journal of Comparative Law 218


Ho VH, “‘Enlightened Shareholder Value’: Corporate Governance Beyond the Shareholder-Stakeholder Divide” (2010) 36 Journal of Corporation Law 61


Shareholder Litigation in Response to the Climate Emergency and Human Right to a Healthy Environment in Asia and the Pacific


Lim E, Directors’ Liability and Climate Risk: White Paper on Hong Kong (Commonwealth Climate and Law Initiative, 2021)

Lim E, Directors’ Liability and Climate Risk: White Paper on Singapore (Commonwealth Climate and Law Initiative, 2021)


Parkin B, C Cornish and H Lockett, “India Ramps Up Spending to Reclaim Place as Fastest-Growing Economy” Financial Times (1 February 2022) https://www.ft.com/content/a0a6cf20-c4c0-43a0-a717-010167dbf1e7


Taylor M, “To hit climate goals, Indonesia urged to ban new palm oil plantations forever” *Reuters* (11 August 2021)
[https://www.reuters.com/article/indonesia-palmoil-climateidUSL4N2OZ0EG](https://www.reuters.com/article/indonesia-palmoil-climateidUSL4N2OZ0EG)

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