Climate change risk is real and here to stay

Climate change will play a significant role in strategic planning in the future, due to the potentially enormous financial risks it poses to companies, particularly those operating within certain sectors or in certain regions.

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For this reason, the Commonwealth Climate and Law Initiative (CCLI) has been examining the legal basis for directors and trustees to take account of climate change risks under prevailing laws and the first comprehensive legal assessments have now been undertaken for four Commonwealth countries: South Africa, Canada, Australia and the United Kingdom. The Centre for Environmental Rights is a member of the CCLI team, and produced the South Africa country paper.

New research

The CCLI's new research has shown, through the analysis of statutory and case law, that a director may breach his or her duties of trust or loyalty where the director consciously disregards, or is wilfully blind to, the financial risks associated with climate change and their potential impact on company strategy or risk management; or where the director's ability to make an independent judgment is compromised by a material conflict of interest. Directors could also be held liable for providing misleading disclosures in relation to climate risks, or for failing to disclosure material information.

The significant commonalities in the laws and legal systems of each of the four countries makes the CCLI's work and outcomes readily transferable. The national legal papers follow a uniform structure and the South Africa country paper considers specific duties in the Companies Act 71 of 2008, the King IV Report on Corporate Governance, and South African case law. Although directors are the focus of the paper, the legal duties of other key participants in the financial services system, insofar as they differ, are also considered.

Reliance on fossil fuel

South Africa, with its heavy reliance on fossil fuels, will need to transition quickly if it is to meet its international climate change obligations. It is clear that climate change mitigation requires forward-looking decision making, and that company directors need to be identifying risks now, to ensure enough lead time to manage risks appropriately.

Good corporate governance practice will require that companies steer their businesses away from climate-related risks, and towards the opportunities that a low-carbon transition provides.