

**Unique Legal Obligations of Officers and Directors of Carbon Major Enterprises and their Investors to Reduce Enterprise Carbon Emissions and Avoid Climate Change Related Human Rights Impacts to Vulnerable Communities, and Measures these Enterprises and their Directors should Implement to Act on/Comply with these Obligations**

SUMMARY OF INTENDED ORAL PRESENTATION

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**SUMMARY OF RECOMMENDED MEASURES to Reduce and Potentially Avoid Human Rights Impacts in the Planning, Financing and Approval of New or Expanded Carbon Plans and Projects**

- I. Carbon Majors should acknowledge the need to commit a higher percentage of funds to business plans and future corporate activity that will decarbonize and diversify their primary energy supply and product mix. This acknowledgement should be confirmed by corporate policy commitments in the form of board resolutions.
- II. More specifically, these corporations should, for example,
  - a) Commit to corporate policies and actions to achieve reductions of carbon emissions and decarbonisation of primary energy supplies so as to reduce the corporation's overall carbon footprint, minimize related human rights impacts, and ensure it has made its appropriate contribution to keeping global warming as to much as possible below 2°C.
  - b) Commit that they will, within one year of a board resolution,
    - (i) develop a specific business plan, including time horizons and approved investment allocations and the steps they will take to implement the plan, to

achieve a peaking of carbon emissions by 2020 concordant with the emission reductions identified by the International Energy Agency (IEA) as required to keep the global temperature rise well below 2°C, and thereafter continue to reduce these emissions by moving to a substantially decarbonized primary energy supply basis, and more substantial investments in and commitments to renewable energy.

1. (ii) The plan must be developed using data that complies with the “minimum disclosure expectations for oil and gas producers” set out in Box 1 of the 2018 report by the Transition Pathway Initiative (under the aegis of the London School of Economics (LSE) and the Grantham Institute), including the mass of carbon emissions as well as the energy intensity of emissions that are now occurring and that in future would arise in a “business as usual” scenario from the company’s activities, with particular attention to providing a plan that complies with the following recommendations:

- i. Includes an objective analysis of the potential emissions from as yet untapped corporate reserves, as well as from current operations, including scope 3 emissions;
- ii. Includes an appropriate analysis and disclosure of the number and extent of possible fuel reserves the company is currently developing (including the country in which they are located), the emissions that could be released by production based on those reserves, including scope 3 emissions, and the percentage that emissions from these sources would be of the total emissions from other carbon major enterprises with reserves and operations in the same country as well as from carbon major operations on a global scale;
- iii. identifies new fossil fuel projects the company may be pursuing and projections regarding emissions that would be caused by those projects if approved.

(c) Circulate the draft plan and proposed action steps identified above, including the data and assumptions on which they are based, to peer reviewers comprised of independent scientific, energy and environmental experts, environmental non-governmental organizations (ENGOS) with experience in these issues, and government agencies with expertise in climate change and emission reductions and decarbonisation pathways, and incorporate revisions to such plans and commitments in accordance with the peer views, and thereafter adopt and publicly publish the plans.

d) Direct that officers of the enterprise provide the Board on at least an annual basis with an analysis of the extent to which the activities of the corporation are on track to achieve the goals and timing of the plan, any issues as to implementation, and recommendations

for other actions that the corporation could take to ensure that the plan intent and objectives are met in the time periods set out in the plan.

e) Make a commitment to begin reporting on climate-related governance, risks, emission reduction goals and metrics according to the Task-Force on Climate-Related Financial Disclosure (TCFD).

III. Government Backstopping of Carbon Major CO<sub>2</sub> emission reductions and decarbonisation of primary energy supplies: These carbon major corporate policies should be backstopped by government requirements to ensure they are carried out. More specifically:

(a) National and subnational governments with authority to regulate the exploration, development and operations of natural resource, or industrial enterprises, together with state agencies that have authority to regulate for environmental protection or human rights within their jurisdiction should:

- i. legally require carbon enterprises to prepare the decarbonizing analysis, disclosure, planning and commitments recommended above and to carry out the plans and actions in accordance with such plans; provided that if a designated government official is of the view such plans and actions are not appropriate for the purposes described above, the state is to impose legally enforceable requirements on any such enterprise to better assure the objectives and timing for such plans and actions are achieved. Such requirements are to include a provision that such plans are not to be reliant on carbon capture methods for more than 5% of carbon emission reductions;
- ii. stipulate the legal duty of directors and officers of these corporations to prepare, implement, review the progress or issues involved in plan implementation, and ensure corporate plans and commitments are carried out;
- iii. legally require, as a precondition of any natural resource or environmental agency with responsibility for issuing licences or other forms of approvals for private sector energy exploration, development, or supply as well as a precondition for any government office or official with discretion to provide funding, loans or financial assurances to private sector enterprises engaging in energy exploration, development or supply:
  - a) that the legally required plans for decarbonization and other actions necessary for the Carbon Majors to meet Paris Agreement objectives have been prepared and are up to date;

b) that the commitments and other actions set out in the plan have been fulfilled or at least are on track to being fulfilled in accordance with the plan and corporate commitments; and

c) that any licenses, other forms of approval or government financial support for the company or the proposed activity for which approval is being sought contribute to the successful implementation of the corporation's commitments to implement measures set out in the plan, and, that if the application is granted, it is not likely, itself or as part of other steps the corporation is taking, to result in the corporation derogating from or failing to achieve its commitments.

- **David Estrin** is Distinguished Adjunct Professor, Osgoode Hall Law School, York University and is recognized as Canada's senior environmental law specialist. He co-chaired the International Bar Association President's Task Force on Climate Change Justice and Human Rights that produced the ground-breaking book, "Achieving Justice and Human Rights in an Era of Climate Disruption"; chaired the International Bar Association Environment Committee, and has been a senior scholar with the International Law Research Program at the Centre of International Governance Innovation, where he focused on new approaches to climate change loss and damage and the role of domestic climate change litigation, despite the Paris Agreement. He is the author of a leading text, "Business Guide to Environmental Law", and been a partner with one of Canada's largest law firms, where he continues as counsel. He is also Co-academic director of the Osgoode Hall Environmental Justice and Sustainability Clinical Program. [destrin@osgoode.yorku.ca](mailto:destrin@osgoode.yorku.ca)
- Professor **Cynthia A. Williams**, Osler Chair in Business Law and Co-Director of the Jay and Barbara Hennick Centre for Business and Law at Osgoode Hall Law School, York University, is an expert in corporate responsibility, securities disclosure, and new governance initiatives. She is principal co-investigator of the Commonwealth Climate and Law Initiative in Canada, which is a project of the Smith School of Enterprise and the Environment, Oxford University, to evaluate directors and trustees' obligations to consider climate change in their strategies, disclosure, and project planning in Australia, Canada, South Africa, and the U.K. She also co-founded and is on the board of the London-based Climate Bond Initiative, which is working to establish a new asset class, Climate Bonds, to fund the transition to a low-carbon economy. She received her

law degree with honours from New York University, and practiced at Cravath, Swaine & Moore in New York City before joining the faculty at the University of Illinois College of Law.

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