

August 2025

The World Court's Climate Opinion May Increase Regulatory Risk for Singapore Businesses

On 23 July 2025, the International Court of Justice (“ICJ”) issued its Advisory Opinion (“AO”) in respect of two questions on the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases; and the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment. The AO impacts Singapore businesses and will likely raise their regulatory risk.

Introduction

The ICJ decided, amongst other things, that States are legally bound under the climate change treaties and customary international law to ensure the protection of the climate system and other parts of the environment from anthropogenic greenhouse gas emissions. A breach by a State of such obligations constitutes an internationally wrongful act entailing the responsibility of that State, and may result in legal consequences including cessation of the wrongful actions or omissions, if they are continuing; providing assurances and guarantees of non-repetition of wrongful actions or omissions, if circumstances so require; and full reparation to injured States in the form of restitution, compensation and satisfaction, provided that the general conditions of the law of State responsibility are met.

Although ICJ AOs are not legally binding, they provide highly influential interpretations of the binding treaty obligations of party States and of customary international law that bind all States generally. The bottom line for businesses is that the AO increases their exposure to climate transition risks and litigation risks, the extent of which depends on which sector they operate in, where they operate and who they do business with.

In Singapore, the AO may prompt the government to reassess the current level of ambition of its nationally determined contributions under the Paris Agreement, to which it is a party, and a rethink of its regulatory mitigation measures, including climate-related environmental impact assessments (“EIAs”).

Stronger Climate Mitigation Ambition?

The ICJ held that the directly applicable laws to States’ obligations concerning the protection of the climate system and other parts of the environment from anthropogenic emissions are not limited to the climate change treaties, namely the UN Framework Convention on Climate Change, Kyoto Protocol, and Paris Agreement, and also include other environmental treaties; and customary international law, and in particular, the duty to prevent significant harm to the environment, and the duty to co-operate for the protection of the environment. The ICJ also considered that the core human rights treaties and the human rights recognized under customary international law also form part of the most directly relevant applicable law. Furthermore, the interpretation and application of these directly relevant applicable legal rules must also be guided by the principles of sustainable development, common but differentiated responsibilities and respective capabilities, intergenerational equity, and precautionary principle. Importantly, while the treaties and customary international law inform each other, they establish independent obligations that do not necessarily overlap.

Tighter Regulatory Mitigation Measures

The ICJ noted that party States to the Paris Agreement are under a duty of due diligence to use best efforts to proactively pursue domestic mitigation measures that are reasonably capable of achieving the nationally determined contributions set by them. These measures may include putting in place a national system, including legislation, administrative procedures and an enforcement mechanism, and exercising adequate vigilance to make such a system function effectively.

Turning to the customary duty to prevent transboundary environmental harm, the ICJ noted that the main elements of this obligation in the context of protection of the climate system are (a) the environmental harm to be prevented and (b) due diligence as the required standard of conduct.

The ICJ noted that the duty arises when there is a risk of significant environmental harm, and such a risk may be present in situations where significant harm to the environment is caused by the *cumulative effect of different acts undertaken by various States and by private actors* subject to their respective jurisdiction or control. The implication of this is that even if a small State such as Singapore emits only a relatively small percentage of the total greenhouse gas emissions posing a significant risk of harm to the climate system and other parts of the environment, it may still be subject to a customary duty to prevent the harm.

Once the duty is triggered, a State must act with due diligence. An element that is particularly relevant in determining what due diligence requires from a State in the context of climate change includes appropriate rules and measures, including *regulatory mitigation mechanisms* that are designed to achieve the deep, rapid, and sustained reductions of GHG emissions that are necessary for the prevention of significant harm to the climate system.

The ICJ singled out in its decision, that the failure of a State to take appropriate action to protect the climate system from greenhouse gas (“GHG”) emissions — including through fossil fuel *production*, fossil fuel *consumption*, the granting of fossil fuel exploration licences or the provision of fossil fuel *subsidies* — may constitute an internationally wrongful act which is attributable to that State.

The ICJ’s reference to the need for States to adopt appropriate domestic mitigation measures, including regulatory mitigation mechanisms, that are capable of achieving progressive and ambitious NDCs; and deep, rapid, and sustained reductions of GHG emissions may prompt Singapore to consider whether its regulation of GHG emitting activities, including activities in the power, industry, transport, and building sectors, from businesses in Singapore and Singapore-registered businesses and their subsidiaries, regardless of whether the emissions take place within Singapore or downstream elsewhere, are sufficient.

The singling out of the need to regulate activities in the fossil fuel sector in this regard is particularly salient for Singapore given the outsized role the sector plays in Singapore’s domestic emissions, even before the considering the impact of the activities of this sector on downstream emissions outside Singapore.

Climate-related EIAs

The ICJ considered that as part of States’ customary duty to prevent transboundary environmental harm, and notwithstanding that the cumulative and diffuse nature of GHG emissions may involve some difficulty in risk assessment, it is important that all States provide for and conduct EIAs with respect to particularly significant proposed individual activities contributing to GHG emissions to be undertaken within their jurisdiction or control, based on the best available science.

While the ICJ did not specify the scope and content of such EIAs, it considered that such procedures must not exclude the assessment of *possible specific climate-related effects at the level of proposed individual activities, e.g. for the purpose of assessing their possible downstream effects*, and be able to identify previously unknown information about possibilities for reducing the quantity of GHG emissions by relevant proposed individual activities.

Although Singapore does not have any law mandating EIAs, it has adopted a policy of potentially requiring EIAs for proposed development projects near sensitive areas, such as Nature Reserves, Nature Areas, marine and coastal areas, other areas of significant biodiversity or with potential trans-boundary impact.

Considering the ICJ’s views in the AO on the duty to provide for and conduct climate-related EIAs, a stronger EIA approach may be required, and Singapore may potentially want to consider whether it should require EIAs for proposed activities contributing to a risk of significant harm to the climate system and other parts of the environment through GHG emissions, and include in such assessments, the *possible cumulative and downstream effects* of such activities.

Conclusion

The AO makes it clear that it is not enough for States to fulfil their obligations under the climate treaties. In some cases, customary international law may impose obligations such as regulatory mitigation measures and EIAs that are more stringent than or not explicit in climate treaties. Businesses in Singapore can expect a good faith consideration by Singapore of the alignment its current domestic mitigation policies and regulations with the ICJ's AO, and the introduction of new and stricter regulations as appropriate.

This Client Update was authored by Partner Dr Joseph Chun.

For more information, please contact:

Dr Joseph Chun

Partner

T: +65 6439 0759

E: joseph.chun@shooklin.com

Shook Lin & Bok LLP

1 Robinson Road #18-00 AIA Tower Singapore 048542 T +65 6535 1944 F +65 6535 8577 E slb@shooklin.com W www.shooklin.com

Shook Lin & Bok LLP (Unique Entity No. To7LL0924K) is a limited liability partnership registered in Singapore.

This information is provided for general information and does not constitute legal or other professional advice. Specific advice should always be sought in relation to any legal issue. Shook Lin & Bok LLP does not accept any responsibility for any loss which may arise from reliance on the above information.