CLIFFORD CHANCE

CLIMATE TRANSITION PLANNING
GUIDANCE ON REPORTING AGAINST THE TRANSITION PLAN TASKFORCE'S NEW DISCLOSURE FRAMEWORK

Moving from net-zero commitments to net-zero transition plans

Companies are under pressure to make public commitments to reach net-zero. However, many of the net-zero commitments announced to date have been set aspirationally, without clear and detailed plans as to how to achieve them. The absence of clarity and detail was evident in how companies reported their net zero commitments, and this in turn brings its own risks, with the FCA noting in its review of TCFD disclosures last year that they "*were often not clear and in some cases they risked being misleading as a result*".[1]

The UK's Transition Plan Taskforce (TPT) was launched by HM Treasury in March 2022 to develop a gold standard for best practice climate transition plan disclosures. In October 2023, the TPT launched the Disclosure Framework (the Framework) and implementation guidance, with further sectoral guidance to follow. The Framework helps companies to prepare and disclose credible and robust transition plans and to combat perceptions of 'greenwashing'. The Framework sets out the five key elements of a good practice transition plan, which are supported by a series of Disclosure Recommendations.

The FCA is encouraging listed companies and FCA-regulated firms to familiarise themselves with the Framework now, to help them identify data gaps and opportunities to improve internal processes, and to consider reporting against the Framework ahead of potential future disclosure requirements. In respect of listed companies, the FCA is planning to consult in the first half of next year on introducing guidance aligned with the Framework in order to strengthen its requirements for transition plan disclosures. This consultation will run alongside its consultation on updating the TCFD-aligned disclosure rules for listed companies to refer to the UK-endorsed ISSB standards and making the compliance basis mandatory. The new rules are expected to apply to listed companies for financial years starting on or after 1 January 2025.[2]

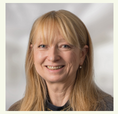
FIVE KEY TAKEAWAYS

1. Familiarise yourself with the Framework and Disclosure Recommendations
2. Decide how ambitious your transition plan will be
3. Consider other global requirements and guidance to future-proof your transition strategy
4. Identify the associated legal risks and consider steps to mitigate them
5. Ensure effective oversight and provide training

1 https://www.fca.org.uk/publications/multi-firm-reviews/tcfd-aligned-disclosures-premium-listed-commercial-companies
2 https://www.fca.org.uk/publications/newsletters/primary-market-bulletin-45

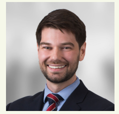
CONTACT THE TEAM

David Pudge
Partner
Corporate
London
T: +44 207006 1537
E: david.pudge@cliffordchance.com



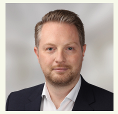
Rae Lindsay
Partner
Litigation and Regulatory
London
T: +44 207006 8622
E: rae.lindsay@cliffordchance.com

Kate Norgett
Corporate Governance Director
London
T: +44 207006 2023
E: kate.norgett@cliffordchance.com



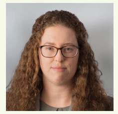
Jeremy Stewart
Lawyer
Litigation and Dispute Resolution
London
T: +44 207006 4502
E: jeremy.stewart@cliffordchance.com

Jeroen Ouwehand
Lead of Firm's Global ESG Board
Amsterdam
T: +31 20 711 9130
E: jeroen.ouwehand@cliffordchance.com

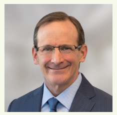


Adam Hedley
Partner
Environment
London
T: +44 207006 3381
E: adam.hedley@cliffordchance.com

Jessica Gladstone
Partner
Litigation and Dispute Resolution
London
T: +44 207006 5953
E: jessica.gladstone@cliffordchance.com



Alanna Hunter
Partner
Corporate
London
T: +44 207006 4393
E: alanna.hunter@cliffordchance.com



Steve Nickelsburg
Partner
Litigation and Dispute Resolution
Washington D.C.
T: +1 202 912 5108
E: steve.nickelsburg@cliffordchance.com

Callum MacLeod
Lawyer
Environment
London
T: +44 207006 3300
E: callum.macleod@cliffordchance.com

Zoe Ram
Lawyer
Corporate
London
T: +44 207006 2814
E: zoe.ram@cliffordchance.com

Isabelle Hessell Tiltman
Head of Corporate Thought Leadership
London
T: +44 207006 1681
E: isabelle.hessell-tiltman@cliffordchance.com

The TPT's Disclosure Framework at a glance

The Framework encourages companies to apply three guiding principles when developing their transition plans: Ambition, Action and Accountability.

- **Ambition** - the Framework encourages companies to be clear about their overall strategic ambition. To what extent will they contribute to an economy-wide transition? And do so in a manner that captures opportunities, avoids adverse impacts for stakeholders and society, and safeguards the natural environment?;
- **Action** - the Framework encourages disclosure of the short-, medium- and long-term actions companies are taking, or plan to take, to achieve their strategic ambition and translate strategic ambition into concrete, short-term steps; and
- **Accountability** – to assist delivery of transition plans, the Framework encourages companies to implement robust governance processes and to report annually on progress against the metrics and targets the company has set. This includes defining clear roles and responsibilities for the delivery and oversight of the transition plan and taking steps to align the company's culture and incentive structure with its strategic ambition.

The Framework builds on these guiding principles to set out the five key elements which should be disclosed as part of a good practice transition plan. These are:

- Foundations;
- Implementation Strategy;
- Engagement Strategy;
- Metrics and Targets; and
- Governance.

These elements are broken down into a further 19 sub-elements, supported by a series of Disclosure Recommendations, together with various additional disclosures for companies to consider.

1. Familiarise yourself with the Framework and Disclosure Recommendations

The Framework provides a helpful reference point for companies to use when reviewing and stress-testing their existing transition-related disclosures and updating transition plans. Companies should consider whether their existing disclosures align with the Framework's recommendations and, where discrepancies exist, determine if these are justifiable based on the company's strategy and circumstances.

Although compliance with the Framework is currently voluntary, the heightened scrutiny of the accuracy, credibility, and completeness of transition-related disclosures, means that companies should carefully consider the Framework as part of their broader governance process for relevant disclosures.

2. Decide how ambitious your transition plan will be

The initial step involves evaluating your company's strategic ambition concerning the transition to net-zero, and how this is reflected in your organisation's governance, planning, and ongoing disclosures. The Framework encourages companies to take a strategic and rounded approach to their transition planning. This involves not only focusing on their own decarbonisation and addressing their own climate-related risks and opportunities, but also considering how they can contribute to an economy-wide transition and protect and enhance long-term value for stakeholders, society, the economy and natural environment on which they depend.

It is, of course, for each company and its directors to determine the scope and ambition of their transition plan.

The recent decision in *ClientEarth v Shell plc*[3] offers directors reassurance that UK courts will not interfere with business decisions in relation to climate strategy made in good faith where the directors have considered all relevant factors. However, following the correct decision-making procedure and being able to demonstrate that you have done so is key.

3. Consider other global requirements and guidance to future-proof your transition strategy

Whilst the Framework is focused on the UK, many other jurisdictions, including the EU and US, are implementing new climate and transition-related disclosure rules. The EU's draft Corporate Sustainability Due Diligence Directive (CSDDD) suggests that the EU may go further and require certain EU and non-EU companies to have a 'Paris-aligned' transition plan. The US SEC's Climate Disclosure Rule for US securities issuers is said to be imminent, and California is planning to enact its own GHG emissions and climate risk disclosure legislation.

Companies should evaluate the potential applicability and timing of these requirements and take them into account (along with the many additional sources of guidance and recommendations that may apply to their business sectors) when developing their transition plan.

The good news for companies navigating these constantly evolving requirements and differing timelines is that standard setters are increasingly working together to ensure their disclosure standards are interoperable and cross-refer to other relevant guidance or recommendations.

3 ClientEarth v Shell plc [2023] EWHC 1137 (Ch)

For instance, the Framework has been designed to build on the climate-related disclosure standard IFRS S2 issued by the International Sustainability Standards Board (which is in the process of being endorsed for use in the UK). In addition, the TPT has published mapping documents to IFRS S2, the TCFD's Recommendations and Guidance and the European Sustainability Reporting Standards. The Framework also aligns with the Glasgow Financial Alliance for Net Zero (GFANZ) transition plan framework. The TPT hopes that the Framework will inform the development and convergence of transition plan disclosures in other jurisdictions.

4. Identify the associated legal risks and consider steps to mitigate them

Transition plans are increasingly under intense scrutiny from investors, regulators and other stakeholders. The risk of climate-related claims, both in terms of adequacy of mitigation strategies and accuracy of disclosures, is escalating. Companies should view their transition plan disclosures in light of these developments and consider steps they can take to mitigate associated legal risks.

Key considerations for companies include:

- Ensuring disclosures are accurate and not misleading by omission. Avoid making promises or focusing solely on the "good news". Provide context and balance.
- Maintaining consistency between transition plan disclosures, financial statements, any other sustainability reporting, and across different channels (for example, social media, websites, etc.).
- Explaining underlying assumptions, judgements, estimates, and sources of uncertainty. Use disclaimers where appropriate.
- Strengthening processes to develop and verify disclosures and to challenge the reasonableness of assumptions and judgements made and documenting these appropriately.
- Ensuring effective board/committee/management oversight. Consider obtaining external assurance where appropriate.
- Keeping statements under review and up to date.

Companies that seek to adopt the best practice approach set out in the Framework are likely to address many of the points set out above and to have gone a long way towards mitigating the risk of being accused of greenwashing.

5. Ensure effective oversight and provide training

For a company, reporting on plans to transition to a lower-carbon economy is more challenging than reporting on historical financial information. A transition plan is necessarily forward-looking, has inherent uncertainties and often relies on underlying information that may be less reliable to start with (for example, where information is obtained from other entities in the value chain).

The internal systems and controls that companies have established to ensure their transition plan reporting is accurate and not misleading (for example, GHG emissions), and to challenge the reasonableness of assumptions and judgements made, are likely to be relatively new and may well be less developed compared with those for financial reporting.

However, as the importance of these disclosures grows, so too do regulatory expectations for oversight and accountability. The FRC is proposing to revise the UK Corporate Governance Code and expand the role of the audit committee and enhance Board accountability for the effectiveness of internal controls over **all** reporting. By integrating financial and sustainability reporting teams, companies can ensure internal coherence, communication and consistency in reporting processes. In anticipation of changes to the UK Corporate Governance Code, companies should review their governance structures and processes to ensure that they are fit for purpose, not least in the context of climate change and the transition to a net-zero economy. Board oversight of reporting on climate risks and the extent of climate expertise on boards are also on the proxy advisers' agenda, and so additional board training could be beneficial.

The TPT Disclosure Framework – in summary

Whilst the Framework sets out what good practice transition plan disclosures should look like, the TPT recognises that companies will need time to develop and iterate their transition plans. As the FCA recommends, early engagement with the Framework should assist companies to improve their existing disclosures as well as to plan ahead.

The Clifford Chance Transition Planning team has been advising the entities that comprise the TPT Secretariat on both the Framework and certain sector guidance, as well as being represented on the Just Transition working group. We also have been supporting the Taskforce on Nature-related Financial Disclosures in developing their framework which was launched in September. We use these insights to inform our advice to companies on a range of matters relating to transition planning, and sustainability and climate-related risk management.

CLIFFORD CHANCE

www.cliffordchance.com
2310-008098