

TheCityUK response to the Transition Plan Taskforce (TPT) Disclosure Framework

Executive Summary

TheCityUK appreciates the efforts of the Transition Plan Taskforce (TPT) in compiling this disclosure framework. We consider that, in order to enable this framework to achieve its aim in the UK and to replicate this approach in other markets, the following needs to be taken forward:

- i. Liability issues need to be resolved on how climate information using estimates and forward-looking statements is treated, if it is to be considered in the same way as regulated financial information for annual reporting in the UK, US and other markets. At this stage, further guidance from global regulators is required on the approach to climate-related forward-looking statements, liability, and disclaimers. In the near term, until these liability issues are resolved, issuers should be permitted to publish their transition plans as standalone documents outside of existing annual/financial reporting. The transition plan should be published publicly on the company's website and be as easily accessible as the annual report. We suggest that any reporting associated with the transition plan (as set out in Guiding Principle 3 in page 9 of the TPT disclosure framework) should also be provided with the transition plan on the company's website.
- ii. Preparers of transition plans may need further clarity on the requirements to update their standalone transition plans to guard against unsubstantiated accusations of greenwashing.
- iii. Whilst addressing liability issues, TheCityUK considers that the scope of transition plans needs to be widened to private companies. However, it is recognised that further support to embed the TPT disclosure framework may be needed.
- iv. The approach of the *ISSB Exposure Draft* should be mirrored, so that an entity takes the same approach to the reporting boundary for its transition plan as it does for its wider corporate reporting.
- v. The TPT should further consider the implications of their recommendation that transition plans for local entities must have regard to jurisdictional climate targets, where they are part of a multinational group. Further guidance could help address this.
- vi. TheCityUK endorses the aim to maximise international alignment when developing this TPT disclosure framework; development of which should also consider forthcoming EU disclosure requirements. We also encourage the UK government to engage and promote the TPT disclosure framework at international levels.
- vii. The UK government needs to ensure that the FCA's requirements and corporate sustainability disclosure requirements are correctly sequenced when implementing the ISSB's standards, whilst clarifying how the TPT disclosure framework translates into that reporting ecosystem. The UK government should outline in detail its approach towards building up the UK disclosures and labelling framework as well as the wider UK sustainable finance ecosystem.
- viii. The UK government should take an iterative approach when implementing the TPT disclosure framework as global standards emerge, to ensure improved consistency and interoperability.
- ix. As the TPT finalises the Implementation Guidance and the FCA and UK Government consider TPT adoption within the UK's regulatory framework, the viewpoint of emerging markets should be considered, alongside providing additional flexibility on the date to full compliance for emerging markets.

- x. There needs to be a recognition of the role and limits of a single entity's transition plan, as that entity's success is often dependent (to varying degrees) on the UK government and its global counterparts providing an effective regulatory environment and well-aligned financial incentives, which are communicated to the private sector well in advance to support a smooth transition. The UK government needs to address these wider policy barriers to credible transition plans through its next Green Finance Strategy and by responding to the recommendations from Chris Skidmore MP's 'Mission Zero: Independent Review of Net Zero - final report'¹.
- xi. We would encourage further integration of the role of nature in the TPT disclosure framework, which also needs to be supported by policies in the wider economy.
- xii. It is important that, when translating this TPT disclosure framework into regulatory requirements, transition plans as forward-looking documents do not (inadvertently) create an expectation that companies must rigidly implement their individual strategies regardless of the wider economic and policy factors and barriers, technological developments and changes in scientific interpretation.
- xiii. TheCityUK considers it premature at this juncture to require transition plans to include disclosures in relation to planned engagement and collaborative activities with peers. Without further clarity on competition law in the UK, EU, US and in other jurisdictions, this would expose entities to increased competition and anti-trust law risk, particularly in view of the anti-ESG movement in the US. This exposure to disproportionate liability risks may outweigh the potential gain in information about an entity's declared impact on peer engagement through trade organisations.
- xiv. Even if these competition and anti-trust risks were addressed as the TPT disclosure framework evolves, TheCityUK considers that the current wording within 3.2 of the TPT disclosure framework and its recommendations to be unduly onerous. It is difficult to prove cause-and-effect of a single entity's influence on broad policy positions decided collectively (outside of a competition-law compliant sustainability agreement) and with government. So rather than requiring disclosure on "how an entity ensures that commitments and actions of an entity's trade organisation...", the rules could instead request information on how that entity's engagement aligns with its own strategy.
- xv. Additionally, some companies may view their net zero efforts as a competitive advantage, so it should be made clear that transition plans should not oblige disclosure of commercially sensitive strategies, dependence on future performance or intellectual property.
- xvi. To accelerate the impact of business and civil society policy engagement, the UK government should analyse aggregated transition plan data generated from the TPT disclosure framework, to identify and address continuing policy, regulatory and incentives gaps for each sector and the wider economy.

Overview

1. We would like to thank the Transition Plan Taskforce (TPT) for its efforts in producing this disclosure framework and supplementary information. We also commend the TPT's level of stakeholder engagement. In principle, we endorse the approach of the disclosure framework, though further consideration is needed on various liability issues and further fine tuning is needed. However, **the UK government and the regulators should recognise the role and limitations of this disclosure framework for the private sector, because its success is still**

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128689/mission-zero-independent-review.pdf

dependent on both global and the UK's wider economy approaches to policies, incentives and regulation to deliver a just transition to net zero.

Scope and reporting boundaries

2. The Chris Skidmore MP's 'Mission Zero: Independent Review of Net Zero - final report'² outlines the current state of play on the scope of disclosure reporting. Although it is mandatory for asset managers/owners and listed companies to include 'comply or explain' requirements to publish transition plans since 1 January 2022, there is no equivalent mandate for transition plan disclosures from private companies.
3. Whilst addressing liability issues (outlined later in this response), **TheCityUK considers that the scope of transition plans needs to be widened to private companies.** If these disclosure rules are not evenly applied:
 - sufficient information across the whole economy that is standardised and decision-useful will not be produced for users of that information (such as investors), and
 - the rules could drive unintended distortions between private and public markets when providing financial services for high-emitting and hard-to-abate industries.
4. **However, it is recognised that further support to embed the TPT disclosure framework may be needed, especially for private companies.** Such support could include continual guidance on how to implement the TPT disclosure framework, sector-appropriate and ready-made solutions for climate scenarios and help to integrate these into targets and metrics, and upskilling of the workforce.
5. On reporting boundaries, **we support the proposal to mirror the approach of the ISSB Exposure Draft so that an entity takes the same approach to the reporting boundary for its transition plan as it does for its wider corporate reporting.**
6. **The TPT should further consider the implications of their recommendation that transition plans for local entities must have regard to jurisdictional climate targets, where they are part of a multinational group.** Guidance could help address foreseeable difficulties in incorporating different national/jurisdictional targets at entity level when producing a group level transition plan. More generally, **TheCityUK endorses the aim to maximise international alignment when developing this TPT disclosure framework; development of which should also consider forthcoming EU disclosure requirements. We also encourage the UK government to engage and promote this TPT disclosure framework at international levels.**

Reporting ecosystem: global interoperability, sequence of reporting and emerging markets

7. We note that the UK should use its first-mover advantage to promote its transition planning approach to its international peers. This will help reduce fragmentation and increase global interoperability for entities operating in multiple jurisdictions, as those jurisdictions consider

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128689/mission-zero-independent-review.pdf

how they approach the sections addressing transition plans within the ISSB standards or the TCFD framework.

8. More generally, **the UK government needs to ensure that the FCA's requirements and corporate sustainability disclosure requirements are correctly sequenced when implementing the ISSB's standards, whilst clarifying how this TPT disclosure framework translates into that reporting ecosystem. The UK government should outline in detail its approach towards building up the UK disclosures and labelling framework as well as the wider UK sustainable finance ecosystem.**
9. As experience is gained from using the TPT framework, **the UK government should take an iterative approach as global standards emerge, to ensure improved consistency and interoperability.** An iterative approach based on drawing out material disclosures will help with global convergence as the experience in transition planning develops.
10. Understanding the role and limitations of this framework against the wider reporting ecosystem is critical. For transition plans and other reporting requirements to be based on more accurate input data to establish baselines and track progress, the right sequence of reporting obligations needs to be in place, highlighted by the TPT and recognised by the UK government and regulators. We note in the TPT workplan that it points to the FCA's plans to strengthen its transition plan disclosure expectations of listed companies, asset managers and FCA-regulated asset owners. However, for listed companies in some industries, asset managers and FCA-regulated asset owners to report more accurate sustainability data and more credible transition plans, the flow of information (more often than not) needs to first come from corporates in the wider economy.
11. An example of this difficulty can be seen in GHG emissions reporting. In many sectors, an entity's largest emissions will be in Scope 3. For that entity's Scope 3 emissions to reduce, there is some dependency on other industries to reduce their respective direct (Scope 1) and indirect (Scope 2) emissions. But if an entity with emissions mostly in Scope 3 is required to disclose before other companies in other industries as part of their value chain, that entity's Scope 3 emissions data is likely to rely on data with larger estimated error bounds (i.e. uncertainty). That entity will not be able to reduce its estimated error bounds (depending on the reporting requirements from each jurisdiction) until more standardised data is generated over time from the value chain in the wider economy. This data forms the basis for setting targets and monitoring progress as part of the transition.
12. This data gap problem is highlighted as part of the "engagement strategy" in the TPT disclosure framework. However, this reporting sequence issue could persist; without further agreed metrics or standardisation for specific sectors (for example, whether it is appropriate to use either or both absolute GHG emissions and GHG intensity metrics), entities in the value chain could be subject to different data requests regarding the same topic from their clients and customers who are carrying out their respective engagement strategies.
13. While there is increasing collaboration between key stakeholders towards attaining a comprehensive global baseline for sustainability disclosure standards and transition plans, the additional challenges in emerging markets where the sustainability data gap is larger than in developed markets should be recognised. This means that for UK entities with a large emerging

markets client base, reporting accurate and reliable Scope 3 emissions data may not be feasible at present. **As the TPT finalises the Implementation Guidance and the FCA and UK Government consider TPT adoption within the UK’s regulatory framework, the viewpoint of emerging markets should be considered, alongside providing additional flexibility on the date to full compliance for emerging markets.**

Credible transition plans’ dependency on wider policy and technology developments

14. In TheCityUK’s response to the TPT call for evidence last year, we highlighted the difficulties in developing credible transition plans for some sectors which are reliant on wider economy net zero policies that have not yet been clarified by the government. We also note that a preparer’s ability to demonstrate credible resourcing plans could also be hampered by reliance on wider economy net zero policies and lack of technological clarity needed to create a credible transition plan. It is hoped that the TPT’s workplan to create and/or signpost to sector-specific guidance will acknowledge these wider difficulties for those harder-to-abate industries.
15. Even with well-designed reporting frameworks, barriers for entities looking to create and implement transition plans will continue to persist without further wider economy policy development. At present, the TPT disclosure framework expects an entity headquartered in the UK to explain how it has considered the Climate Change Committee’s (CCC) advice to the UK government. Depending on the industry, that entity may continue to encounter barriers if the UK government delays its consideration of the CCC’s advice to provide an effective regulatory environment and well-aligned financial incentives, which are communicated to the private sector well in advance to support a smooth transition. **The UK government needs to address these wider policy barriers to credible transition plans through its next Green Finance Strategy and by responding to the recommendations of Chris Skidmore MP’s *Mission Zero report*³.**
16. There are also potential tensions between entity-level and economy-wide decarbonisation, as some competitors in the same industry may need different timelines as they may have different baselines, or there being delays in technological innovation due to safety concerns. **It is important that when translating the TPT framework into regulatory requirements, transition plans as forward-looking documents do not (inadvertently) create an expectation that companies must rigidly implement their individual strategies regardless of the wider economic and policy factors and barriers, technological developments and changes in scientific interpretation.** This is an on-going issue as entities and individuals use their judgment to try to carry out the right course of action whilst balancing potential trade-offs.
17. **We would also encourage further integration of the role of nature in the TPT disclosure framework, which also needs to be supported by policies in the wider economy.**

Engagement strategy and competition risks

18. In the TPT disclosure framework on “engagement strategy”, it seeks disclosures on how an entity engages with its peers, value chain and government/civil society. Entities and their peers choose to be members of different trade organisations for different reasons. Some trade organisations’ positions as a collective may not necessarily align perfectly to the entity’s own interests, as those

³ <https://www.gov.uk/government/news/net-zero-review-uk-could-do-more-to-reap-economic-benefits-of-green-growth>

organisations may only address some aspects of an entity's business (such as regulatory requirements) or be cross-sectoral.

19. Most entities as members do not have singular control over a trade organisation's activities, as decisions are made based on collective views of its members. While there may be collective agreement on the need for a rapid transition to net zero, there could be some disagreement about how to achieve that between individual entities, the trade-offs, the level of technological maturity and the perceived lack of government support – which is reflected in the dependence of credible transition plans on wider policy and technological developments as described above. Additionally, some entities may view their net zero efforts as a competitive advantage, so it should be made clear **that transition plans should not oblige disclosure of commercially sensitive strategies, dependence on future performance or intellectual property.**
20. We note that the Competition and Markets Authority (CMA) will be consulting shortly to provide clearer guidance on “environmental sustainability agreements”, namely:
 - Where agreements do not affect the way firms compete, such as a campaign to raise awareness;
 - Where the agreement could in theory breach competition law but in fact does not because it is not an appreciable restriction, such as a code of conduct which meets certain criteria;
 - Where the agreement does appreciably breach competition law but maybe permitted anyway because of an exemption which sets out criteria for the agreement to outline substantial and demonstrable benefits.⁴

Depending on how this guidance develops and the potential need for legislative intervention, **the TPT, government and regulators should be mindful of how an entity's future engagement strategy (especially with its peers) could present a future conflict with other legal obligations.**

21. Without further clarity on competition law in the UK, EU, US and in other jurisdictions, this would expose entities to increased competition and anti-trust law risk, particularly in view of the anti-ESG movement in the US. This exposure to disproportionate liability risks may outweigh the potential gain in information about an entity's declared impact on peer engagement through trade organisations. **TheCityUK therefore considers it premature at this juncture to require transition plans to include disclosures in relation to planned engagement and collaborative activities with peers.**
22. Even if these competition and anti-trust risks were addressed as the TPT disclosure framework evolves, TheCityUK considers that the current wording within 3.2 of the TPT framework and its recommendations to be unduly onerous. It is difficult to prove cause-and-effect of a single entity's influence on broad policy positions decided collectively (outside of a competition-law compliant sustainability agreement) and with government. So rather than requiring disclosure on “how an entity ensures that commitments and actions of an entity's trade organisation...”, the rules could instead request information on how that entity's engagement aligns with its own strategy.

⁴ <https://www.gov.uk/government/speeches/sustainability-exploring-the-possible>

23. To accelerate the impact of business and civil society policy engagement, **the UK government should analyse aggregated transition plan data generated from the TPT disclosure framework, to identify and address continuing policy, regulatory and incentives gaps for each sector and the wider economy.**

Legal liabilities: impact on issuers and disclosure risks

24. We note that, within the TPT definition of a “transition plan”, as part of an entity’s overall strategy it must contribute and prepare for a global rapid transition “...in a manner that is consistent with its constitutional documents and the duties of its directors and senior managers”. Further clarification and developments will be needed as disclosures within transition plans could create unintended consequences and increase legal risks.

UK TPT disclosure requirements and its impact on issuers in the US

25. **TheCityUK considers that liability issues need to be addressed before requiring companies to disclose transition plan information in their annual reports.** The UK’s additional disclosure requirements for transition plans could expose issuers to increased litigation and reputational risks under securities laws, especially for US filings, due to

- (i) the fast-moving environment and changing nature of transition plans and
- (ii) the requirement to update disclosure when there are ‘significant’ changes to the plan.

26. These risks include strict liability for issuers with US filings which contain any untrue statement of a material fact or omitting to state a material fact necessary in order to prevent the information from being misleading.⁵ It is understood that if an investor proves there is a material misstatement or omission, the investor does not need to prove that the issuer acted negligently or with any ill intent or that they relied on the misstatement or omission or suffered a loss, and the issuer will be liable without any defences available to it – apart from the forward-looking statement safe harbour.

27. For issuers required to disclose under UK and US regimes, if required to disclose transition plans within UK annual reports, such issuers will need to assess whether such information is material and therefore required to be disclosed in the US. This concept of materiality is particularly challenging for issuers when required to disclose climate-related information, which is frequently inherently uncertain due to the lack of data and reliance on estimates.

28. Climate information and the proposed content of a transition plan would be forward-looking in nature. There is a safe harbour available⁶ in the US where the issuer will not be liable with respect to any forward-looking statement if the issuer has complied with certain conditions, including identifying the forward-looking statement as such and accompanying this by an appropriate cautionary legend. This safe harbour was designed in respect of financial information and currently it is unclear how this will operate with climate information.

29. Disclaimer language that may be included in climate reporting continues to be debated. Current guidance from the Climate Financial Risk Forum (CFRF) is that “*Any disclaimer should accurately reflect the area of concern and should be tested to ensure it is neither too narrow nor too wide.*”

⁵ Section 11 of the US Securities Act

⁶ Private Securities Litigation Reform Act of 1995

The location, font size and formatting of the disclaimer should also be considered carefully, so it is not presented in the form of a “*legal boilerplate*”.⁷ The CFRF references the recent Shell case⁸, in which the Dutch court interpreted some broad disclaimers and other statements in Shell’s climate strategy documents as undermining its commitment to the targets stated.

30. At this stage, further guidance from global regulators is required on the approach to climate-related forward-looking statements, liability, and disclaimers.

Liability under the UK Financial Services and Markets Act 2000 (FSMA)

31. For a UK listed company, the inclusion of a transition plan within its annual report exposes to the company to potential liability under the FSMA 2000. The annual report’s content is regulated information and therefore in scope of potential FSMA liability for misleading statements or dishonest omissions.

32. Under FSMA, an issuer can incur liability for misleading statements or dishonest omissions in certain published information relating to the securities.⁹ This applies to information published by the issuer by “recognised means”¹⁰, which includes a “recognised information service”¹¹. A “recognised information service” is defined as a service used for the dissemination of information in accordance with Article 21 of the Transparency Obligations Directive.¹² Article 21 is transposed by the FCA’s Disclosure and Transparency Rules (DTRs) through DTR 6.3.2; this means an issuer can incur liability for misleading statements or dishonest omissions from information published in accordance with DTR 6.3.2.

33. DTR 6.3.2 requires an issuer to disclose “regulated information” in a certain way. The FCA defines “regulated information” as “all information which an issuer... is required to disclose under DTR”.¹³ Since DTR requires an issuer to publish their annual report¹⁴, anything within the annual report is “regulated information”. In terms of the method of disclosure required by the DTRs, this includes the requirement to use an RIS (regulatory information service).¹⁵ Therefore, as an annual report is regulated information and published through an RIS in accordance with the DTR requirements, it is in scope of the FSMA liability provisions for misleading statements or dishonest omissions.

34. Given the unique challenges of climate-related information being based on estimates, the UK should include exemptions from FSMA liability for such climate-related information forming part of regulated information published in annual reports. **In the near term, until these liability issues are resolved, issuers should be permitted to publish their transition plans as standalone documents outside of existing annual/financial reporting. The transition plan should be published publicly on the company’s website and be as easily accessible as the annual report.**

⁷ <https://www.fca.org.uk/publication/corporate/climate-financial-risk-forum-guide-2021-disclosures-legal-risk.pdf>

⁸ <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2021:5339&showbutton=true>

⁹ FSMA Section 90A

¹⁰ FSMA Schedule 10A, Part 1, Section 2(1)(a)

¹¹ FSMA Schedule 10A, Part 1, Section 2(3)(a)

¹² FSMA Schedule 10A, Part 1, Section 2(4)(a)

¹³ FCA Glossary (note this also includes information an issuer is required to disclose under Market Abuse Regulation and Listing Rules).

¹⁴ FCA DTR 4.1.3

¹⁵ DTR 6.3.3(2)

35. In addition, there will be reporting associated with Guiding Principle 3 (page 9), which refers to “consistent, comparable and decision-useful reporting and verification” and timebound metrics and targets which should be reported on annually. Companies may deem this material information and include it in their annual report, or they may deem that it is not material in that context. **We would suggest that any reporting associated with the transition plan should also be provided with the transition plan on the company’s website.**
36. On the assumption that the abovementioned liability issues are addressed, **we note that preparers of transition plans may need further clarity on the requirements to update their standalone transition plans to guard against unsubstantiated accusations of greenwashing.** Those preparers will already have to make difficult judgements about whether material updates should be included annually in the annual report or a subsequent standalone transition plan (published every three years) or both. The requirement to update where there are ‘significant’ changes could inadvertently lead to an onerous rolling disclosure requirement. A potential way to address this could be to require an annual update (alongside annual reporting) to give preparers certainty about the reporting requirement. This would mitigate against unnecessary and spurious claims against preparers for the lack of understanding and guidance on what is significant, and how that would be substantiated.

TheCityUK
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