

Q&A: New Climate-Related Disclosure Regulations Proposed for UK Companies

11 / 18 / 21

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Greg Norman

Partner / London
44.20.7519.7192
greg.p.norman@skadden.com

Adam M. Howard

Counsel / London
44.20.7519.7091
adam.howard@skadden.com

Kathryn Gamble

Associate / London
44.20.7519.7219
kathryn.gamble@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

40 Bank Street, Canary Wharf
London, E14 5DS, UK
44.20.7519.7000

The UK Department for Business, Energy and Industrial Strategy (BEIS) announced on 28 October 2021 that new climate-related disclosure requirements had been laid before the Houses of Parliament. The proposals, contained in the Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2021 (Regulations), would amend the Companies Act 2006 and require many large and/or listed UK companies, as part of their strategic reporting, to provide information in accordance with the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD).

Below are answers to key questions companies may have about the new requirements. The Regulations are currently in draft form and this Q&A reflects the Regulations as announced on 28 October 2021.

1. When will the Regulations come into force?

If passed into law, the Regulations will be effective from 6 April 2022 and companies subject to them will need to comply with the new reporting requirements for accounting periods starting on or after 6 April 2022.

2. What obligations do the Regulations impose?

Companies will be required to disclose the sustainability-related information outlined in the Regulations (see question 6 below) in the non-financial information statement portion of their strategic reports.

The strategic reports will be publicly available, filed at UK Companies House and accessible to investors and the general public free of charge.

3. Which companies will be affected?

The Regulations will apply to the following UK-incorporated companies: (i) a traded company; (ii) a banking company; (iii) an authorised insurance company; and (iv) a high-turnover company, provided in each case that the company has more than 500 employees (or, if it is a parent company, that it together with its subsidiaries has more than 500 employees).

a. What is a traded company?

A traded company is one whose shares are admitted to trading on a UK-regulated market. This includes companies whose shares are (i) listed on the premium or standard segment of the Official List and are traded on the Main Market of the London Stock Exchange; or (ii) traded on AIM.

Please see question 6 below regarding the existing obligations for companies with a premium listing and the incoming obligations for companies with a standard listing.

b. What is a banking company?

A banking company is a company that has permission under Part 4A of the Financial Services and Markets Act 2000 (FSMA) to accept deposits, except if such permission is only for the purpose of carrying on another regulated activity in accordance with the permission granted under Part 4A of the FSMA.

c. What is an authorised insurance company?

An authorised insurance company includes a person (whether incorporated or not) who has permission under Part 4 of the FSMA to effect or carry out contracts of insurance and any person (whether incorporated or not) who carries on insurance market activity or may effect or carry out contracts of insurance

Q&A: New Climate-Related Disclosure Regulations Proposed for UK Companies

under which the benefits provided by that person are exclusively or primarily benefits in kind in the event of accident to or breakdown of a vehicle.

d. **What is a high-turnover company?**

A high-turnover company is one that, in a particular financial year, has turnover of more than £500 million (or, in the case of a parent company, one that, together with its subsidiaries, had an aggregate turnover of more than £500 million).

4. **What is the meaning of ‘parent’ and ‘subsidiary’?**

A company is a ‘parent company’ to another company, a ‘subsidiary company’, if it: (i) holds a majority of the voting rights in the subsidiary; (ii) has the right to appoint or remove a majority of the board of directors of the subsidiary; or (iii) has the right to exercise a dominant influence or control over the subsidiary.

Indirect subsidiaries will be counted as subsidiaries, and two companies will be regarded as parent and subsidiary if they are managed on a unified basis – *i.e.*, the whole of the operations of these companies are integrated and managed as a single unit.

The parent company must be incorporated in the UK to fall within the scope of the Regulations. When considering the subsidiaries of a UK-incorporated company for the purposes of the ‘high turnover company’ test, all of that company’s subsidiaries, whether incorporated in the UK or overseas, must be taken into consideration. However, the definition of parent and subsidiary does not include ‘sister companies’ (*i.e.*, subsidiaries of a common parent).

5. **Are there any exceptions?**

A company otherwise subject to the Regulations will not need to publish an annual climate report if it is a subsidiary and is included in its parent company’s group strategic report. To be exempt, the parent’s report must be prepared for a financial year that ends at the same time as, or before the end of, the subsidiary’s financial year and the report must include a group non-financial and sustainability information statement in respect of the subsidiary and all other companies included in the consolidation.

6. **What are the reporting requirements?**

The Regulations propose mandatory disclosure of material information in all four of the TCFD’s core categories: Governance, Strategy, Risk Management, and Metrics and Targets.

Currently, it is unclear exactly what information will need to be included in a company’s report. BEIS intends to release

more comprehensive guidance in the form of a Q&A document before the end of 2021 to assist companies in preparing to implement the Regulations.

7. **Do the Regulations differ from the current climate-reporting requirements for companies with a premium listing?**

Companies with a premium listing are currently required to state in their annual reports whether they have produced TCFD-aligned disclosures across each of the four core TCFD categories, or explain why they have not done so.

The UK Financial Conduct Authority has confirmed that the application of the TCFD-aligned disclosure requirements will be extended to companies with a standard listing for financial years beginning on or after 1 January 2022.

As mentioned in Question 5, the exact reporting requirements under the Regulations are still unclear and it remains to be seen whether companies with a premium or standard listing will need to make disclosures beyond those already required.

8. **Who will be liable for this disclosure?**

The intention is for companies within the scope of the Regulations to incorporate climate reporting into their strategic reports. As a result, the directors of such companies will be liable for the contents of the strategic report, including any additional disclosure required by the Regulations.

Additionally, where a company publishes a strategic and sustainability report that contains untrue or misleading statements or omits material facts, and a person acquires, holds or disposes of shares in the company in reliance of the information and suffers a loss as a result, the company may be held liable. In such circumstances, the directors would be liable to compensate the company for any loss as a result of such untrue or misleading statements if they either knew or were reckless as to whether the statement was untrue or misleading or knew the omission to be a dishonest concealment of a material fact.

9. **What are the implications for overseas parents with UK subsidiaries?**

Overseas companies that are not incorporated under or governed by the Companies Act 2006 will not be within the scope of the Regulations, but some of their subsidiaries may be subject to them. Overseas companies should therefore consider whether any of their UK subsidiaries are within the scope of the Regulations and, if so, whether to report on an individual or, if applicable, consolidated basis.