The Chancery Lane Project

Toolkit

Climate risk and M&A

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This toolkit helps practitioners identify and structure climate risks. It is not a compliance checklist but a framework to guide professional judgment, with a deliberate focus on physical and transition risks to highlight their growing relevance in everyday legal practice.

Understanding climate risk in the M&A sector

Climate risk is now a material concern in M&A transactions. It affects, amongst other things, the valuation of targets, future liabilities of acquirers, future investment and financing options and the brand and reputation of both the acquirer and target.

Physical climate risks (such as flooding, drought, wildfires, and extreme heat) can disrupt operations, damage assets, reduce productivity and cause reputational harm. **Transition risks** (arising from policy shifts, regulation, investor expectations, and market evolution) can strand assets or render business models obsolete.

These risks are **identifiable**, **quantifiable**, and **reasonably foreseeable.** They are not edge cases. For example:

- A buyer acquires an agribusiness reliant on steady weather conditions - only to discover climate volatility has slashed harvests and insurance coverage is no longer viable.
- A coastal logistics company's assets are at risk of sea level rise, with insurance costs spiking and facilities facing planned retreat.

Developed with the support of AI under the author's framework and editorial direction, this toolkit has been peer-reviewed by senior practitioners in the field to ensure its practical relevance and professional integrity.

- A target company's core product is natural gas boilers; incoming regulation bans sales within five years.

Impacts and legal consequences

When climate risk is not adequately addressed at the deal stage, the acquiring party may be exposed to a wide range of financial, legal and operational consequences.

Physical risks such as flooding, wildfire or subsidence can lead to the devaluation or outright destruction of key assets. These risks also affect insurability: premiums may rise sharply, or cover may be withdrawn entirely, particularly for operations located in high-risk areas.

Operational disruption is another significant concern. Climate-related events can force the closure of critical facilities or interrupt supply chains - such as when extreme heat reduces agricultural yields or transport becomes unreliable. In turn, this can displace workforces, lower productivity, and divert management attention towards crisis response rather than growth or integration.

The reputational risks should not be underestimated either. Where the target's company's climate practices, risk preparedness or sustainability strategy fall short of market norms, public scrutiny and investor pressure can follow. Moreover, existing contractual protections may be insufficient: many standard force majeure clauses exclude foreseeable events, and climate-related impacts are increasingly viewed as foreseeable by courts and insurers.

Additional exposure may arise through third-party claims or regulatory enforcement, particularly where there has been a failure to comply with emerging disclosure or sustainability obligations. There is also the risk that the target's business model or operations are materially misaligned with the buyer's own net zero or climate strategy, undermining post-deal integration and future planning.

In short, failure to account for climate risk may mean overpaying for a business that is already (or soon will be) underperforming or unsustainable. Left unexamined, these risks can crystallise into significant legal liabilities and financial losses, with boards and advisers increasingly under scrutiny for failing to exercise reasonable care in identifying and mitigating foreseeable harm.

Practical tools for risk management

1. **Pre-deal assessment**

    a. Instruct independent experts: e.g., environmental engineers to assess wildfire or flood exposure.

    b. Conduct climate focused due diligence:

        i. Historical incident data and future projections (fires, floods, heat stress)

        ii. Transition risk exposure (e.g., regulatory change, fossil fuel dependencies)

        iii. Business continuity planning, disaster recovery capability

        iv. Climate-related litigation or insurance claims history

        v. Climate strategy and policy both documented and in practice

    You can access TCLP's guide: **Request climate information in due diligence questionnaires** for practical advice on assessing the climate performance of other organisations and how they will impact your transition plan.

2. **Valuation and negotiation** - integrate findings into pricing strategy and deal structure

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3. **Contractual protections**

    a. Climate-specific warranties and indemnities - e.g., accuracy of emissions disclosures, resilience planning, insurance status

    b. Material adverse change (MAC) clauses - tailored to cover significant climate events or regulatory shifts

    c. Post-completion covenants - investment in decarbonisation or resilience measures

4. **Review target's existing contracts**

    a. Scrutinise force majeure clauses - general 'acts of God' wording may not suffice - wildfires, floods or droughts may no longer be 'unforeseen'

    b. Identify termination risks or change of law exposure

5. **Post-deal integration and monitoring**

    a. Embed target into buyer's climate transition plan

    b. Ensure compatibility with applicable regulations, standards and investor expectations

    c. Review insurance, capital expenditure and compliance plans

    d. Identify opportunities for asset repurposing or decarbonisation

Every M&A deal and the businesses involved will be different. Effective management of climate risk should be focused on the particular priorities, risks and opportunities that relate to that transaction. Understanding these from the outset will be key to managing them as part of the transaction and into the future. The best climate risk management in M&A enables resilience and supports the transition to a low carbon economy.

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Due Diligence Questionnaire for M&A and Capital Markets

As a first step, why not consider Gordon's DDQ - TCLP's DDQ that requires a company to provide information on its ESG strategy and related risk management.

Use this toolkit flexibly: select the tools and drafting approaches most relevant to your transaction, adapt them to your client's context, and let us know how you're using it.

For now, we're only asking for your name and email through this feedback form so we can follow up with you later about your experience.

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