**[Javier’s Clause]**

**Stakeholder Company Climate Questionnaire**

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|  | **How to use this clause** |
| **Child’s Name** | Javier’s Clause |
| **Full Name** | Stakeholder Company Climate Questionnaire |
| **Why use this?** | For individuals, this questionnaire provides a framework for understanding net zero and the steps organisations need to take (and the policies governments need to enact) to transition to a net zero future.[[1]](#footnote-2) It also provides a way for individuals to participate in - and potentially influence - organisational shifts towards climate positive, net zero aligned behaviours that are critical for mitigating the dangers of climate change. |
| **Practice Area / Sector** | Practice Area(s):   * Commercial * Corporate * Employment (including Share Schemes & Incentives & Pensions)   GICS Sector (Industry Group/ Industry):   * Universal   Other:   * Employment Law * Consumer Law * Corporate Governance |
| **Climate Issue** | Research from the UK has found low levels of public understanding about net zero and what it means in practical terms for organisations. The research further suggests that individuals are likely not prepared to make the necessary lifestyle changes for a transition to a net zero economy without seeing that other parties are ‘holding up their end of the bargain’. They want to see targets that they believe are achievable, and they want to know that there will be proper oversight.[[2]](#footnote-3)  The Energy & Climate Intelligence Unit and Oxford Net Zero (University of Oxford) found that, of a survey of: (i) more than 4,000 significant entities; (ii) nations, states and regions in the 25 highest-emitting countries; (iii) all cities with a population above 500,000; and (iv) all companies in the Forbes Global 2000 list, only:   * 20% of net zero targets met basic robustness criteria; * 60% had interim targets; * 62% had a reporting mechanism; and * 44% had a published plan.[[3]](#footnote-4)   These insights show that much more must (and can) be done by major actors if we are to reach Paris Agreement goals, in particular limiting global temperature increase to 1.5 degrees Celsius above pre-industrial levels and achieving net zero or net negative by 2050 or sooner.  Individuals are consumers, employers, employees, contractors, investors, pension holders and, critically, voters. Accordingly they have the power to influence and accelerate organisations’ transition to net zero. Assisted by this questionnaire, individuals can explore and respond to organisational climate strategies and net zero targets. They can applaud and support them or expose empty pledges, greenwashing (the appearance that organisations are doing more than is required to achieve the necessary emissions reductions) and organisational over-reliance on offsetting.[[4]](#footnote-5) |
| **Drafting Solution** | A set of questions that explore the climate position and net zero ambition of an organisation, specifically companies. Javier’s Clause is unique among TCLP clauses because of its ability to target the wider web of contractual relationships and leverage points that individuals hold over organisations that are not generally negotiated by lawyers. |
| **Impact: How this drafting promotes a net zero future** | The questionnaire empowers individuals (as employers, employees, consumers, clients, contractors, investors, pensions holders) to engage with major actors on the question of net zero and play an active role in influencing organisational behaviour in climate positive ways in the journey to a net zero future. If adopted widely, it could raise awareness of - and perhaps even change - climate strategy of high emitting organisations. |
| **Legal Context** | Climate change is now accepted as an issue that poses financial and systemic risks. Increasingly, climate risk is understood to mean the impact of an organisation and its activities **on** climate, as well as the risk of climate change **to** an organisation.  Organisations and their leadership teams need to integrate and manage climate risks and opportunities as part of their governance role and to fulfil their duties.[[5]](#footnote-6)  The decisions of the Hague District Court in *Milieudefensie et al. v Royal Dutch Shell plc* and the Federal Court of Australia in *Sharma and Ors v. Minister for the Environment,* materially increase the exposure of corporations to litigation risk in relation to their emissions. Moreover, shareholder activism (demonstrated at ExxonMobil and Chevron in 2021) poses a direct risk to the tenure of directors who fail to take meaningful steps to decarbonise.[[6]](#footnote-7) |
| **Environmental Context** | Governments pledged in the Paris Agreement to achieve “a balance between anthropogenic emissions by sources and removals by sinks” in mid-century, in pursuit of holding global warming to 1.5℃.[[7]](#footnote-8) The Intergovernmental Panel on Climate Change (IPCC)’s 2018 r[eport](http://www.ipcc.ch/report/sr15/) on the 1.5ºC target concluded that global emissions need to reach net zero around mid-century to give a reasonable chance of limiting warming to 1.5ºC.[[8]](#footnote-9) This was reaffirmed and elaborated on in the first instalment of the IPCC’s 2021 sixth assessment report in 2021, which said that global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO2 and other greenhouse gas emissions occur in the coming decades. In the near term (2021-2040), the 1.5°C global warming level is very likely to be exceeded under the very high GHG emissions scenario, likely to be exceeded under the intermediate and high GHG emissions scenarios and more likely than not to be exceeded under the low GHG emissions scenario and the very low GHG emissions scenario. The very low emissions scenario assumes that total global CO2 emissions will drop by roughly 25% by 2030 and about 50% by 2035. It estimates the remaining carbon budget from 2020 for a reasonable chance (67%) of limiting warming to 1.5C is 400bn tonnes of CO2 (GtCO2).[[9]](#footnote-10)  There is complexity in the concept of net zero and much debate about its pros and cons. Critics warn that net zero targets are misleading, insufficiently robust, a dangerous trap or fantasy, leading us to rely too heavily on offsetting, and technology that has not yet been proven and a diminished sense of urgency. Proponents argue that if the criteria can be strengthened and robust targets set (in a way that avoids greenwashing), ‘net zero’ is necessary to trigger and continue decarbonisation, and that without it ambitious climate action may be undermined.[[10]](#footnote-11) It is therefore important to increase public engagement, awareness and understanding of the nuances of net zero and the principles of ambitious net zero target setting.[[11]](#footnote-12)  Some of the frameworks referred to in the questionnaire include:   * Race to Zero (an umbrella with partners through which companies can sign up to a recognised standard for their target setting, actions and behaviours);[[12]](#footnote-13) * The Science Based Targets initiative (SBTi) (which validates and advises companies on emissions reduction targets in accordance with what the latest climate science indicates is necessary to prevent the worst effects of climate change);[[13]](#footnote-14) * CDP (the widely used global disclosure system for investors, companies, cities, states and regions to manage their environmental impacts);[[14]](#footnote-15) * Task Force on Climate-related Financial Disclosures (a disclosure framework set up by the Financial Stability Board to improve and increase reporting of climate-related risks and opportunities to companies);[[15]](#footnote-16) and * Climate Action 100+ publishes company information on 167 companies that account for over 80 percent of corporate industrial greenhouse gas emissions and produces a benchmark of indicators to assess those companies.[[16]](#footnote-17)   Resources and information around best practice to help organisations meet their net zero targets can be found in Oxford Net Zero’s tools library and Exponential Roadmap’s The 1.5°C Business Playbook.[[17]](#footnote-18) |
| **Stakeholders** | 1. Consumers 2. Sustainable consumer goods platforms and websites 3. Employees 4. Employment procurement providers 5. Job websites 6. Any individual with a long term or repeating contractual relationship with a company |
| **Potential barriers or challenges to integration / implementation & mitigation** | Employees who are reserved about presenting the questionnaire to an employer may feel more comfortable doing so as an internal climate group or committee.  Consumers who feel sceptical about the extent to which companies will engage with them as individuals can present the questionnaire as a member of consumer groups, trade bodies, guilds and other associations with greater lobbying power and leverage to elicit a response.  Respondents may ignore the questionnaire because they:   1. already publish their climate policy/transition strategy and make disclosures in their annual report and/or on their website; 2. may be satisfied with their sustainability or ESG policy; 3. do not have the capacity or resources to respond, and in particular because there is no legal requirement (presently) for them to do so.   Respondents may welcome the questionnaire too - as evidence of stakeholder support for existing or emerging climate strategies or to strengthen internal mandate for stronger climate ambition.  Other benefits flowing from improved transparency and disclosure on climate issues: protecting and improving reputation; building trust; boosting competitive advantage for improved stock market performance; providing access to capital and winning tenders; being ahead of and prepared for regulatory change; identifying emerging environmental risks and opportunities; and tracking and benchmarking progress.[[18]](#footnote-19) |
| **Notes for users** | The questionnaire is intended to be used by individuals who want to understand the climate position and net zero ambition of organisations (in particular, companies) that they engage with. It can also be adapted to suit questioners who are investor or shareholder groups.  The questionnaire is comprehensive and deliberately so, to provide a framework for understanding net zero and the practical steps organisations need to take to transition to a net zero future.  Users of the questionnaire should see the questions as a menu of options to choose from and tailor them so that the length of the questionnaire and the detail required of the respondent, is appropriate to each respondent. This will maximise the chances for respondent engagement and response.  For further information on net zero, see TCLP’s [Net Zero Explainer](https://docs.google.com/document/d/1mU8opXBt-pn9zNSbm4J0uiXQwR58MsCLLe5CP5iqeyQ/edit?usp=sharing) and [Net Zero: What is it? Video](https://www.youtube.com/watch?v=S-GQOp3GDYk). |

**Stakeholder Company Climate Questionnaire**

This questionnaire is designed to understand a [company]’s position on climate change and its net zero ambition.[[19]](#footnote-20)

**Request for information - Introduction**

As a [purchaser/user/employee/supplier] [of [company/ company’s products and or services], [we/I] would like to understand the ways in which [company]]/[the provision of company’s products and or services] is consistent with the global transition to a net zero economy. [We / I] would be grateful if you could provide the information set out below.

**Governance and Strategy**

*Policies*

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| 1. What is the [company]'s policy on climate change? Is it contained in a specific policy document and if so, please provide a copy? 2. Describe the risk management policies the [company] has in place related to climate change? 3. Is the remuneration of any of the [company]’s employees, leadership team or shareholders linked to the [company] achieving its climate objectives (including interim and long-term emissions reductions/ net zero targets)? 4. Do any of the remuneration structures create perverse incentives (for example that may favour investment in assets at risk of being stranded in the transition to a low-carbon economy)?   *Strategy*   1. Does the company have a climate strategy (the **Strategy**)? If so, is it contained in a specific policy document and who has operational responsibility for it? 2. Is the Strategy embedded in the company’s overall strategy and operations? 3. How is the Strategy shared with internal and external stakeholders? 4. Does the [company] consider that its business strategy and operations are exposed to climate-related risks? If so, how will the [company] adapt its business strategy and operations to minimise its exposure to such risks? 5. Has the [company] used stress-testing and scenario analysis in its strategic planning? Can it disclose the results of its analysis?   *Board/ Leadership Team*   1. Are board level decisions on climate and climate strategy based on specialist climate advice or expertise?   *(Climate must be embedded in [company] decision-making and take place at the highest level.[[20]](#footnote-21))*   1. How do the board and senior management (including legal, governance, finance and risk teams) keep up to date with climate change risk and climate governance? 2. Is [company] management held accountable for implementing climate-related policies and strategies set by the board and if so, how?   *Shareholders*   1. Where applicable, has the [company] introduced shareholder voting on climate transition action plans (i.e. [Say on Climate](https://www.sayonclimate.org/))?   *Third parties*   1. Has the [company] embedded its climate targets and behaviours into its contracts with other parties?[[21]](#footnote-22) |

**Metrics and Targets**

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| 1. Describe any Key Performance Indicators that are relevant to the [company]s exposure to climate change risks. For example, has the [company] set a net zero target? |
| *(A net zero target is a target to reduce greenhouse gas emissions and/or to ensure that any ongoing emissions are balanced by removals.[[22]](#footnote-23))* |
| 1. Does the [company] aim to achieve net zero or absolute/gross zero by 2050 or sooner? Does it have plans in place to be net negative thereafter? |
| *(The Intergovernmental Panel on Climate Change* [*Special Report*](http://www.ipcc.ch/report/sr15/) *(the United Nations body for assessing the science related to climate change) in 2018 and its* [*Sixth Assessment Report*](https://www.ipcc.ch/report/ar6/wg1/) *in 2021 made clear the vital importance of reaching net zero by 2050 or sooner.*[[23]](#footnote-24) *See* [*Oxford Net Zero’s summary*](https://www.netzeroclimate.org/what-is-net-zero/) *for information on the difference between terms.*[[24]](#footnote-25)) |
| 1. Does the [company]’s net zero target relate to operational emissions only or to full value chain emissions? Does it specify sub-targets for [Scope 1, 2 and 3 emissions](https://chancerylaneproject.org/glossary/scope-1-2-and-3-emissions/)? |
| *(The Greenhouse Gas Protocol: A Corporate Accounting and Reporting Standard, Revised Edition 2015 as updated from time to time, categorises greenhouse gases into scope 1, 2 and 3 emissions.*[[25]](#footnote-26) *Scope 1 relates to direct emissions from sources owned or controlled by the [company]. Scope 2 relates to indirect emissions associated with electricity purchased by the [company]. Scope 3 relates to all other indirect emissions from sources not directly owned or controlled, upstream and downstream in the supply or value chain.[[26]](#footnote-27))* |
| 1. Does the net zero target or its accompanying information align with the [Paris Agreement](https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement) goal of pursuing efforts to limit global temperature increase to 1.5℃ above pre-industrial levels? |
| *(Companies that emit highly then decarbonise rapidly for 2050 will bake in higher warming than those who adopt immediate but gradual emissions reduction.[[27]](#footnote-28))* |
| 1. Has the [company] joined [Race to Zero](https://racetozero.unfccc.int/)?[[28]](#footnote-29) |
| *(Race to Zero is a recognised standard for target setting, actions and behaviours that companies can sign up to.[[29]](#footnote-30))* |
| 1. Has the [company] set a [Science Based Target](https://sciencebasedtargets.org/)?[[30]](#footnote-31) |
| *(The Science Based Targets initiative (SBTi) validates and advises companies on emissions reduction targets in accordance with what the latest climate science indicates is necessary to prevent the worst effects of climate change.[[31]](#footnote-32))* |
| 1. Has the [company] set short and medium term interim targets between the date of this questionnaire and the net zero target date (in particular over the next 5-10 years)? |
| *(It is recommended that companies set an interim target to achieve in the next decade, which reflects maximum effort toward or beyond a fair share[[32]](#footnote-33) of the minimum 50% global reduction in CO2 by 2030 identified in the IPCC Special Report on Global Warming of 1.5 degrees Celsius and reaffirmed by the IPCC* [*Sixth Assessment Report*](https://www.ipcc.ch/report/ar6/wg1/) *in 2021.[[33]](#footnote-34))* |
| 1. Does the [company] aim for annual percentage reductions in emissions, or other continuous measured emissions reductions? |
| *(It is suggested that, as a minimum, organisations should aim to halve absolute emissions every decade, a 7% year on year reduction.[[34]](#footnote-35))* |
| 1. Does the [company] have a decarbonisation plan to achieve its targets? 2. What action has the [company] already taken to achieve or reach its emissions reduction targets? |
| 1. Are the [company]’s emissions measurements [and or other climate risk-related metrics i.e. water use, energy consumption] verified by an independent third party? 2. Does the company report (at least annually) on its progress against interim and long-term emissions reduction targets, as well as the actions taken to achieve them? 3. Who monitors [company] compliance with its targets and how regularly does compliance monitoring take place? |
| **Leadership and Just Transition** |
| 1. Describe how the [company] enables others to contribute to climate change strategies? |
| (*The Paris Agreement requires equity and common but differentiated responsibilities to decarbonisation in the light of different national circumstances. It is widely accepted that a just transition to a net zero future needs to be inclusive but there are varying views on how the burden for reducing emissions should be shared.[[35]](#footnote-36))* |
| 1. Does the [company] consider wider local and global stakeholders (including employees, clients, end customers and supply chain partners) affected by climate risk and support them to improve their resilience to climate change?[[36]](#footnote-37) 2. How does stakeholder feedback feed into the company’s collaboration and focus on climate change initiatives with wider stakeholders? |
| 1. How does the [company] incorporate social and ‘just transition’ considerations into its climate related strategies? 2. Does the [company] consider climate in its resourcing choices? For example, local, low carbon materials and labour, giving surplus materials to community projects, investing in training for low carbon product manufacturing or helping underrepresented groups to access new green job opportunities.[[37]](#footnote-38) |
| 1. Does the [company] have a policy to ensure that its lobbying activities, trade association memberships and public policy positions align with the Paris Agreement?[[38]](#footnote-39) |
| 1. Does the [company] embed climate policy engagement throughout its organisations, for example by employee and business network education?[[39]](#footnote-40) |
| 1. Does the [company] engage in climate policy leadership (for example by sectoral collaboration or funding climate projects)?[[40]](#footnote-41) |
| 1. Does the [company] consider or engage in other policies or behaviours that indirectly drive emissions reductions or support the transition to net zero, for example, in its approach to food procurement and waste, circular economy considerations, reduction of single use plastics, risk/resilience and adaptation considerations, waste reduction, water conservation, promoting or protecting biodiversity and nature or other environmental matters? |

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| **Offsetting (Compensation and Neutralisation)** |
| 1. Does the [company] use [offsetting](https://chancerylaneproject.org/glossary/carbon-offsetting/) to reach its net zero target? |
| *(Offsetting means the purchase of carbon credits from a project:*  *(i) that has been verified in accordance with [insert name of voluntary standard] or under the United Nations Framework Convention on Climate Change (UNFCCC) clean development mechanism (CDM) [or [successor/ equivalent] UNFCCC mechanism];*  *(ii) where the emissions of greenhouse gases (GHG) avoided, reduced or removed by the project are additional;*  *(iii) that, in relation to GHG removals, employs long-lived storage methods that have a low risk of reversal over millennia;*  *(iv) that prioritises the removal of GHG from the atmosphere rather than avoids or reduces third party emissions of GHG; and*  *(v) that takes account of a just transition and addresses wider social and ecological goals.)* |
| 1. Does the [company] follow a mitigation hierarchy when using offsetting i.e. the [company] continuously reduces, properly accounts for and discloses absolute emissions **before** compensating unavoidable or [residual emissions](https://chancerylaneproject.org/glossary/residual-emissions/)? |
| *(Residual emissions are emissions of GHGs that remain after all reasonable efforts have been made by the [company] to reduce GHG emissions from all operations (including value and supply chains). See also The Oxford Principles for Net Zero Aligned Carbon Offsetting for best practices of offsetting.)*[[41]](#footnote-42) |
| 1. Can the [company] provide details of its offset credits provider? |
| *(Purchasing offset credits from a recognised provider should help to ensure that offsets are additional, permanent and verifiable.)*[[42]](#footnote-43) |
| 1. Can the [company] provide details about the types of projects its offset credits are invested in? |
| *(Ideally, offsets should gradually move:*   * *from short-lived, uncertain and higher risk storage to long-lived storage methods that have low risk of reversal over millennia (‘like for like’[[43]](#footnote-44)); and* * *to offsets that remove emissions, rather than avoid or reduce others’ emissions; and* * *consider implications on a just transition, global equity, and wider social and ecological goals.[[44]](#footnote-45))* |
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3. The Energy & Climate Intelligence Unit and Oxford Net Zero, [Progress Tracking - Net Zero Climate](https://netzeroclimate.org/innovation-for-net-zero/progress-tracking/) (March 2021); [TAKING STOCK: A global assessment of net zero targets](https://ca1-eci.edcdn.com/reports/ECIU-Oxford_Taking_Stock.pdf?mtime=20210323005817&focal=none) [↑](#footnote-ref-4)
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11. See [Net Zero Principles - Net Zero Climate](https://netzeroclimate.org/policies-for-net-zero/net-zero-principles/) for more information. [↑](#footnote-ref-12)
12. [Join the race - Race to Zero & Race to Resilience](https://racetozero.unfccc.int/join-the-race/) [↑](#footnote-ref-13)
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16. [https://www.climateaction100.org/](https://www.climateaction100.org/approach/the-three-asks/); [Climate Action 100+ Net Zero Company Benchmark PDF](https://www.climateaction100.org/wp-content/uploads/2021/03/Climate-Action-100-Benchmark-Indicators-FINAL-3.12.pdf) [↑](#footnote-ref-17)
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27. Paying for Emissions We’ve Already Released, Anne M Stark, 5 January 2021: [Paying for emissions we've already released](https://phys.org/news/2021-01-emissions-weve.html) ; Zhou, C., Zelinka, M.D., Dessler, A.E. *et al.* Greater committed warming after accounting for the pattern effect. *Nat. Clim. Chang.* 11, 132–136 (2021). [Greater committed warming after accounting for the pattern effect](https://doi.org/10.1038/s41558-020-00955-x) [↑](#footnote-ref-28)
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