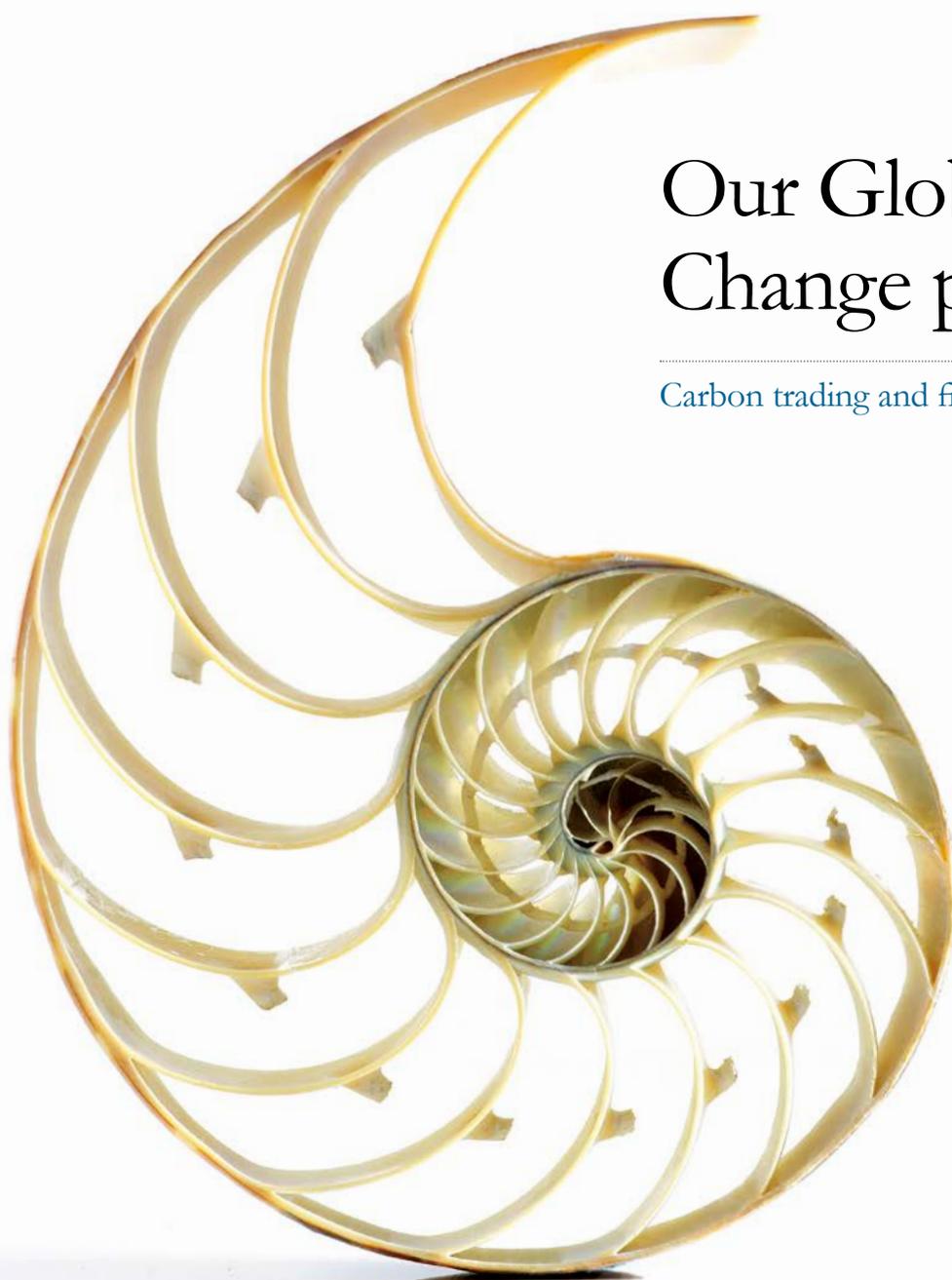


# ALLEN & OVERY

## Our Global Climate Change practice

Carbon trading and finance credentials | 2018



*We have extensive, cutting-edge experience of working with clients in both the public and private sectors on climate change projects and have the depth of resources through our international network of lawyers to help our clients achieve their commercial aims in this fast-developing market.*

# Climate change: a growing opportunity

Emissions trading has developed into a key policy instrument in efforts to reduce greenhouse gas emissions worldwide and looks set to continue in a significant role in the coming years. With major policy and regulatory developments in the pipeline at global, regional and national levels, participants in the carbon market are evolving strategies to manage risks and uncertainties and to grasp the opportunities offered in this exciting field.

## How can Allen & Overy assist you?

Whether your organisation is leading the market or just beginning to consider carbon trading opportunities and whether you are a project developer, an investor, trader or compliance buyer, Allen & Overy can offer you an unrivalled concentration of expertise on a range of different structures and investments. Our Global Climate Change group comprises an integrated worldwide team of market-leading specialists from our Environmental, Derivatives, Capital Markets, Corporate Law, Tax, Regulatory Funds and Project Finance practices.

# Our Carbon Trading and Finance practice

## Cutting-edge innovation

We target the groundbreaking work in this area, often advising on ‘market firsts’. Our advice on bespoke carbon procurement structures, innovative carbon funds and cutting-edge emission reduction projects and secondary market transactions includes advising:

- Khazanah Nasional Berhad (Khazanah), the investment holding arm of the Government of Malaysia, on the formation of a Southeast Asian emission reduction joint venture company with Camco International Limited (Camco), a leading global developer of emission reduction and clean energy projects listed on the Alternative Investment Market (AIM) of the London Stock Exchange.
- JPMorgan on its acquisition of EcoSecurities, a leading company in the business of sourcing, developing and trading emission reduction credits. This was a major success for our Climate Change group and one of the most significant transactions in the emissions trading area in recent years.
- International Swaps and Derivatives Association (ISDA) on various assignments including drafting its emissions trading documentation and advice on cutting-edge market developments.
- An international bank with a large carbon portfolio on drafting a suite of documents for a three-tier carbon trading transaction structure in respect of CERs (including Post-2012 and non-EU ETS eligible CERs), including an ERPA, a SERPA between two banking institutions and a SERPA with a compliance buyer.
- A major financial institution on the legal nature of carbon credits in the context of thefts from national registries.
- A major bank on structuring and credit-wrapping a large private sector syndicated purchase of CERs. This was a significant project for our client and marked an important step in the development of their carbon trading business. Our in-depth knowledge and understanding of the operation of the carbon markets was paired with our deep experience in the credit markets to ensure seamless advice to our client. Not only did our client rely on us to analyse and advise on the provisions of the carbon procurement contracts themselves, but we also advised on the most effective method for our client to provide credit protection to participants in the scheme in relation to their co-participants, having regard to the various ways in which our client was in turn able to hedge the resulting credit risk (for example using proxy hedges in the credit derivatives market).

*“They have good people for trading and emissions work. They are a high quality team.”*

Chambers Global 2015 (Climate Change: Global-wide)

*Ranked top tier for  
Global Climate Change*

Who's Who Legal 2017



- An Asian energy company on the structuring and establishment of a carbon trading arm. We advised the client on the structuring of its carbon trading business, in the light of tax and regulatory issues as well as points specific to emissions trading. We also advised the client on the design of standard trading contracts for the new trading vehicle, drawing on our extensive knowledge of primary and secondary market documentation and practice. Again, this transaction depended on the multidisciplinary nature of our Climate Change practice, with a core team of experts from our Environmental Regulatory, Derivatives and Tax groups working together.
- An investment bank on a proposed structured carbon transaction relating to a portfolio of ERPAs. We were required to analyse possible structures for the commercialisation of a portfolio of ERPAs, bringing together our knowledge of structured products and securitisation with our expertise in CDM. Key issues that emerged in this transaction were limitations on the ability to create security over carbon credits themselves and over the ERPAs due to restrictions on assignment and termination on certain credit events.
- A French investment bank on the creation of a joint venture with an energy company for the purchase and forward sale of CERs.
- A major European company on pools of CDM projects emissions purchase agreements and drafting agreements for onward sale to members of a buyer's pool, including loan structures.
- A leading investment bank on its loan to a start-up carbon project portfolio company and its subsequent participation in the purchase of resulting CERs.
- Daiwa Securities SMBC on a unique structured finance offering linked to the construction and operation of a greenhouse emissions project in China, and the future market for the carbon credits generated.
- A major power utility in Asia on the establishment of a carbon trading platform.
- Phillips 66 on a potential challenge to the European Commission, DECC and the EA concerning the determination and application of the CSCF.



## Secondary market

We have in-depth experience through advising numerous banks, carbon consolidators and other secondary market players, as well as compliance buyers, on secondary market transactions. As well as numerous trades involving CERs (and also some ERUs), we advise extensively on EUA trades and swaps. We have also advised companies with EU ETS installations extensively on the EU ETS and NAP allocations and challenges. Our participation in ISDA steering group meetings on emissions trading gives us a head start in this area.

Much of our work in the carbon trading and finance arena has involved significant tax issues and our tax specialists understand, and have been extensively involved in advising on, carbon-related issues.

Experience includes advising:

- ISDA in relation to the development of standard form documentation for European emissions allowances trading, including standardising treatment of Article 17 and other delivery issues.
- A major bank on the establishment of carbon custody and trustee services.
- A leading Dutch bank on the establishment of safekeeping accounts for CERs generated in India.
- On a carbon exchange on the development of rules and procedures for carbon credit trading.
- A major investment bank on ISDA-based documentation and registry account requirements for trading using the national registry of Japan.
- A European industrial operator on CER/EUA swaps and swap options with European utilities and financial institutions.
- An international financial institution on the structuring of secondary ERPA offtakes of CERs.
- A major bank on the documentation of back-to-back primary and secondary market ERPAs.
- The lead manager of a bond issue which may be settled physically with carbon credits or with cash in connection with the development of an ecological project in West Africa.

## Emissions reduction projects

We advise buyers and sellers of carbon credits from CDM, JI and voluntary projects and investors in and developers of those projects in a wide range of jurisdictions. We have advised on structures ranging from simple bilateral purchases to more complex trust and agency structures. We have also assisted a number of financial institutions and electricity generators in developing their own standard form agreements for the purchase and sale of CERs on the primary market.

Some recent examples include advising:

### PRC

- A leading international financial institution on the purchase of CERs, including advice on the Chinese law aspects of the project.
- A leading international financial institution on the purchase of CERs from a chemical-related CDM project in China.
- Deutsche Bank AG on more than ten CDM projects in China.
- Environ Holdings on the establishment of a CDM project with a Chinese petrochemical company.
- Evelop on three proposed joint ventures with Sinohydro to develop 300MW of wind farms in Inner Mongolia, Hainan and Gansu Provinces, China. The projects were all structured to be CDM-compliant. We carried out full legal due diligence on the projects and advised on the terms of the joint venture contracts.
- A carbon aggregator on the purchase of CERs from a group of projects in the iron and steel sector in China.
- A UK utility on a syndicated purchase of CERs from a chemicals project in China through a trust structure.

*“Very strong, very talented, very bright guys.”*

Chambers Global 2017 (Climate Change)

- An intergovernmental financial institution as part of a consortium purchasing CERs from an HFC 23 decomposition process in China.
- A Spanish energy company in relation to the implementation of wind farm CDM projects in China.
- A Japanese industrial client on the purchase of CERs from a wind farm in China.
- A European bank on purchases of CERs from biomass projects and projects in the iron and steel sector in China.
- A Japanese utility on the purchase of CERs from hydroelectric projects in China.
- A European financial institution on the purchase and on-sale of CERs from hydropower and coking projects in the PRC.
- A UK utility on purchases of CERs from two district heating projects in the PRC, including corporate due diligence.
- IFC on a proposed investment in a Chinese geothermal project, including assisting on the structuring of the transaction and on-sale of CERs, including advice on the Chinese law aspects of the project.

#### *Europe, Middle East, India and rest of Asia*

- A leading international financial institution on the purchase of CERs from a project in India.
- A producer of calcium and magnesium based chemicals, on the drafting, review and negotiation of CO<sub>2</sub> allowances swap contracts.
- A major ‘green city’ project incorporating a number of CDM projects.
- An intergovernmental financial institution on its purchase of CERs from a coke production facility in India.
- A UK bank on its purchase of CERs from an industrial gas project in India.
- A French bank on its purchase of CERs from a project in South Korea.
- A major UK bank on the purchase of CERs from a waste to energy project in Mauritius.
- A Dutch bank on the purchase of CERs from a run-of-river hydroelectric project in Fiji.

- The Jordanian Government on the terms of a proposed water treatment project, including on the process for registering the project under the CDM mechanism and the offtake of CERs.

#### *Africa*

- A leading development bank on its purchase and onward sale of carbon credits for an NO<sub>2</sub> plant in South Africa.
- A chemicals company on a carbon credit project development agreement involving the transfer of technology to South Africa.
- A financial institution on a combined loan and carbon credit purchase arrangement with a project in Tanzania.
- A leading international financial institution on the purchase of CERs from a project in South Africa.

#### *Latin America*

- A leading international financial institution on the proposed purchase of CERs from a hydroelectric project in Brazil.
- A UK investment bank on its investment in CDM projects in Brazil.
- A Mexican project developer on the sale by tender of issued CERs to a UK investment bank.
- A private equity house on the purchase of CERs from a Mexican hydroelectric dam project.
- A French bank on its purchase of CERs from a project in Brazil.
- Deutsche Bank on the drafting and negotiation of a suite of back-to-back ERPAs (involving a primary ERPA and two secondary market ERPAs) in respect of CERs from Mexican CDM projects.
- A South American project developer on the drafting and negotiation of various ERPA termination deeds and the renegotiation of new ERPA agreements in relation to an Argentinian CDM project.
- Pampa Energia on the development of two CDM projects in Argentina, including reviewing ERPA and other agreements.

## JI

Highlights of our work on JI projects include advising:

- A leading international financial institution on its acquisition of AAUs and ERUs from a portfolio of projects in Ukraine.
- An intergovernmental financial institution on its acquisition of ERUs from an NO<sub>2</sub> project.
- An energy producer on the implementation of a JI project in Russia and arrangements for the sale of ERUs.
- A leading development bank in its acquisition of AAUs and ERUs from a portfolio of projects in Ukraine.
- A Japanese conglomerate on its investment in a landfill gas project in Armenia.
- A UK utility on an agreement to acquire ERUs from a JI project in New Zealand.
- A UK bank on the acquisition of ERUs from a JI project in New Zealand.
- An investment bank on the acquisition of ERUs from one of the first JI projects in Germany, including advice on the relevant regulatory structures and the role of the project initiator.

## Funds

Our recent work with funds investing in emissions reductions and emissions trading includes advising:

- Centrica on its investment in Climate Change Capital's second carbon fund.
- A UK utility on the establishment of a bankruptcy remote carbon credit procurement vehicle.
- A U.S. hedge fund on investments in carbon funds with activities in Russia and China.
- A Dutch investment fund on its involvement in a carbon credit purchasing fund.
- A hedge fund on the application of the investment management exemption to carbon trading and funds.
- A leading Dutch bank on the creation of a CDM fund on behalf of the Netherlands.
- A European carbon fund manager on the establishment of a carbon fund for a development bank.
- A German industrial operator on the purchase of CERs from a procurement facility run by a state bank.
- An investment bank on a draft offering memorandum for a Climate Fund including drafting carbon-specific provisions regarding the treatment and investment of carbon assets under the fund.



## EU ETS/regulatory advice

We regularly advise on the EU ETS and its interface with Kyoto Protocol flexible mechanisms, in transactional and stand-alone contexts. We have advised industrial operators and major financial institutions on topics such as:

- Details of the operation of quantitative limits on CER/ERU use in different EU Member States.
- Consequences of plant closure or reduction in production for allocations of EUAs.
- Restrictions on the eligibility of CERs and ERUs from certain project types in the EU ETS in Phase II and the status of large hydro projects.
- The use of CERs and ERUs in Phase III of the EU ETS.
- Banking of EUAs between phases of the EU ETS.

Highlights of our recent experience include advising:

- Billerud on a litigation matter in Sweden with the Swedish state relating to the legal framework for carbon allowances.
- Nuon on the allocation of emission allowances for the district heating plant at Lelystad.
- A major European corporate on the acquisition of an installation with EU ETS obligations.
- The Flemish Government on the implementation of the Emissions Trading Directive and the drafting of the first Flemish allocation plan.
- A leading international investment bank and other syndicate banks on the allocation of EUAs and emissions trading in the context of bank restructuring and insolvency.
- Companies in the paper industry in legal proceedings challenging Phase I EUA allocations.
- An investment bank on a national power provider's allocation of EUAs under the UK National Allocation Plan.
- 28 companies, coordinated by Federacciai (the Federation of Italian Steel Companies), in a dispute before the Administrative Court of Rome in connection with the Resolution which allocates CO<sub>2</sub> quotas for the period 2013-2020.

- Various companies in the energy sector in Germany in administrative litigation proceedings in relation to allocations under the Phase I and Phase II German NAPs.
- Five Rings Capital on a variety of EU regulatory matters concerning the ETS and market regulation issues.
- Total on a challenge to the allocation of allowances under the EU ETS.

## Voluntary markets

Our particular experience in the compliance sector gives us the transferable expertise to assist clients with legal issues in the voluntary market. Some experience highlights so far in this relatively new area include advising:

- Eco Energy Markets on whether it is or may be carrying out regulated activities in breach of the Financial Services and Markets Act 2000 and/or in breach of the restrictions on financial promotions by virtue of its activities concerning the voluntary carbon markets.
- An Amsterdam-based multinational energy client on the VER purchase contracts in relation to the sale of a stake in its business.
- An international investment bank in relation to the potential purchase of VERs from a project in South America in connection with a credit card offsetting programme for its customers.
- A large financial institution in relation to a project in China where VERs were being sold pre-CDM registration.
- A carbon aggregator in relation to the purchase of credits from the Gold Standard projects.
- A number of clients in relation to structuring issues and the status of VERs.

*“Offers particular strength in transactions such as carbon trading and renewables and energy project financing, thanks to solid support from its finance practice.”*

Chambers Global 2015 (Climate Change)

# Your key global contacts

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## GLOBAL PRESENCE

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Allen & Overy is an international legal practice with approximately 5,400 people, including some 554 partners, working in 44 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

Abu Dhabi	Bucharest (associated office)	Ho Chi Minh City	Moscow	Seoul
Amsterdam	Budapest	Hong Kong	Munich	Shanghai
Antwerp	Casablanca	Istanbul	New York	Singapore
Bangkok	Doha	Jakarta (associated office)	Paris	Sydney
Barcelona	Dubai	Johannesburg	Perth	Tokyo
Beijing	Düsseldorf	London	Prague	Warsaw
Belfast	Frankfurt	Luxembourg	Riyadh (cooperation office)	Washington, D.C.
Bratislava	Hamburg	Madrid	Rome	Yangon
Brussels	Hanoi	Milan	São Paulo	

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