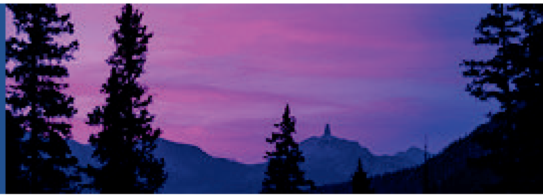

The Climate Report

REGULATORY ISSUES & UPDATES

European Taxonomy Regulation Extended to Natural Gas and Nuclear Energy

On July 15, 2022, the *European Union Official Journal* published Commission Delegated Regulation (EU) of March 9, 2022. The new regulation implements European Regulation (EU) 2020/852 of June 18, 2020 (the "Taxonomy Regulation") and amends both Commission Delegated Regulation 2021/2139 of June 4, 2021 (the "Climate Delegated Act") and Commission Delegated Regulation 2021/2178 of July 6, 2021 (the "Disclosures Delegated Act"), which specifies the content and presentation of information to be disclosed by certain undertakings subject to the taxonomy.

As indicated in a previous edition of the *Climate Report*, the European taxonomy is designed to determine when an economic activity qualifies as "environmentally sustainable" in order to establish the degree to which an investment in that activity is "environmentally sustainable." It also includes disclosure requirements.

The purpose of the new Commission Delegated Regulation (EU) of March 9, 2022 is to include certain energy activities related to the use of natural gas and nuclear energy among the economic activities "eligible" under the taxonomy and to provide for technical criteria to make such activities "aligned" with the taxonomy.

This decision is grounded on Article 10(2) of the Taxonomy Regulation, which provides that economic activities for which there are no technologically and economically feasible low-carbon alternatives may qualify as contributing substantially to climate change mitigation where they support the transition to a climate-neutral economy. Based on a number of consultations and scientific advice, the European Commission reached the conclusion that natural gas and nuclear activities may qualify as "transition" energy under certain technical criteria, as defined by Commission Delegated Regulation (EU) of March 9, 2022. By way of illustration, the extension of an existing nuclear power plant may be eligible under the taxonomy until 2040 and the construction of new plants until 2045.

Stringent technical criteria are defined by the new Commission Delegated Regulation. With respect to the use of natural gas, the life-cycle greenhouse gas emissions from the generation of electricity using fossil gaseous fuels must be lower than 100 g CO2e/kWh, as calculated using Recommendation 2013/179/EU or, alternatively, using ISO 14067:2018 or ISO 14064-1:20180. These criteria will be updated in the future. For instance, the Commission indicates that, starting in 2025 and every 10 years thereafter, it will revise and revisit the technical criteria applicable to nuclear power plants.

Furthermore, some criteria imposed by the new Commission Delegated Regulation are not related directly to the operation of the facilities themselves, but the implementation of policies at the Member State level. In particular, Member States will have to provide a documented plan to organize the disposal of high-level radioactive waste by 2050 in order for nuclear power plants located on their territories to be eligible under the taxonomy. Similarly, with respect to the use of natural gas, if the activity takes place on the territory of a Member State in which coal is used for energy generation, that Member State must have committed to phase out the use of energy generation from coal.

This new regulation is likely to create new opportunities for natural gas and nuclear energy in the European Union in the midst of the current energy crisis, though it may not deter nongovernmental organizations from continuing to challenge fossil fuel or nuclear activities.

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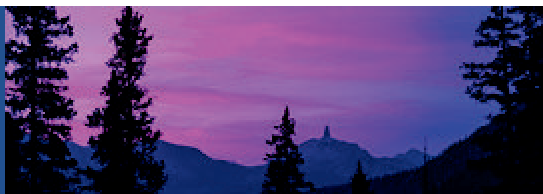

The Climate Report

REGULATORY ISSUES & UPDATES

CFTC Holds First-Ever Voluntary Carbon Markets Convening

On June 2, 2022, the U.S. Commodity Futures Trading Commission ("CFTC") hosted the first-ever Voluntary Carbon Markets Convening at its headquarters in Washington, D.C. This event brought together climate policy experts from across the regulatory and market spectrum to discuss issues relating to credits for the reduction or removal of carbon dioxide emissions from the atmosphere, also known as carbon offsets. Companies wishing to achieve their climate pledges and emission reduction goals may voluntarily purchase carbon offsets to compensate for emissions that could not otherwise be reduced directly. The CFTC has increasingly emphasized the need for standardization within voluntary carbon markets as well as appropriate safeguards for market integrity.

At the outset of the daylong event, Chairman Rostin Behnam emphasized that voluntary carbon markets present an opportunity for both the derivatives market and regulators like the CFTC to play a larger role in climate risk management. In response, many panelists offered their support for public policy measures aimed at increasing standardization and transparency across voluntary carbon markets. Other panelists, however, cautioned that a universal standard may not account for important distinctions across different sectors. Additionally, panelists emphasized the need to collect the data necessary to ensure the integrity of carbon offsets by demonstrating that they actually result in carbon reduction or emission avoidance. Panelists also offered their perspectives on global supply and demand-side factors impacting high-quality carbon offsets and outlined the evolving market structure for trading carbon offsets and carbon derivatives.

On the same day as the Voluntary Carbon Markets Convening, the CFTC also released a Request for Information ("RFI") seeking public comment on climate-related financial risk within the derivatives and commodities markets. According to the CFTC, the information gathered through this RFI may be used to amend existing policies or regulations. Comments are due by August 8, 2022. The CFTC therefore appears poised to expand its footprint within the regulation of carbon markets and facilitate the transition to a net-zero economy. Indeed, Chairman Behnam underscored that, in the CFTC's role as market regulator, it will implement the necessary rules and regulations to help voluntary carbon markets grow in a responsible way.

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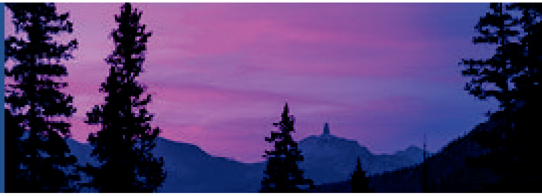

The Climate Report

REGULATORY ISSUES & UPDATES

Pennsylvania Joins the Regional Greenhouse Gas Initiative

On April 23, 2022, Pennsylvania became the 12th state to join the Regional Greenhouse Gas Initiative ("RGGI"). Entry into the cap-and-trade program is one of the cornerstones of Governor Tom Wolf's efforts to mitigate carbon dioxide ("CO2") emissions from the Commonwealth's power sector. While Pennsylvania's move to join RGGI, beginning in 2019, has ended, the collaborative work of implementing the program and remaining a member has just begun.

RGGI Recap

RGGI is a market-based program that began in 2005 and has since expanded throughout the northeastern United States. By entering RGGI, states agree to place a limit on the amount of CO2 their power plants can emit. Regulated power plants then buy pollution permits up to a set maximum emissions limit. Due to the regional nature of the agreement, emission allowances can be bought and sold across state lines. Proceeds from pollution permit sales are reinvested into state programs supporting energy efficiency, renewable energy, and greenhouse gas abatement. Participating states' maximum CO2 emissions limits get reduced each year as the clean energy sector grows.

Immediate Effects of RGGI

The Pennsylvania Environmental Quality Board made Pennsylvania's entry into RGGI official via a publication in the *Pennsylvania Bulletin*. RGGI will affect the Commonwealth's fossil fuel-powered generators able to produce 25 MW or more of electricity. The rulemaking establishes that the Commonwealth's CO2 emissions cap will start at 78 million tons in 2022 and decline to roughly 58 million tons by the end of 2030.

Affected power plants have been tasked with accounting for their CO2 emissions. Facilities must then obtain one CO2 allowance per one ton of CO2 emitted. Relevant dates for CO2 accounting are as follows:

- The emissions accounting period officially began on July 1, 2022;
- Facilities must account and obtain allowances for 50% of their 2022 emissions by March 1, 2023; and
- Facilities must account and obtain allowances for 100% of their 2022 emissions by March 1, 2024.

The CO2 Budget Trading Program has built in protection from extreme price fluctuation in CO2 allowances. The program also has annual CO2 allowances set aside for waste coal-fired facilities, combined heat and power facilities, and strategic use allocation. Further, the program offers a limited exemption available to plants providing power to industrial, institutional, or commercial facilities.

Looking Forward

The Pennsylvania Environmental Quality Board anticipates that, by 2030, Pennsylvania's participation in RGGI will decrease greenhouse gas emissions in the Commonwealth by 31% compared to 2019 levels. The Pennsylvania Department of Environmental Protection has also projected that participation in RGGI will bring Pennsylvania an increase in jobs and a gross state product boost of nearly $2 billion. The precise impacts on the Commonwealth, however, remain to be seen.

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Victoria Kline, a summer associate in the Pittsburgh Office, contributed to this article.

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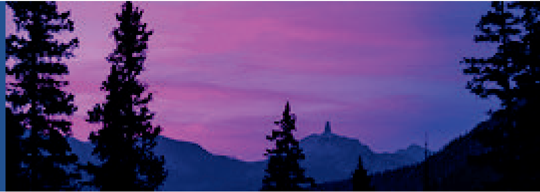

The Climate Report

REGULATORY ISSUES & UPDATES

Jones Day Submits Comment Letter on SEC's Proposed Climate-Related Disclosure Rules

On June 16, 2022, Jones Day submitted a comment letter (the "Letter") relating to the U.S. Securities and Exchange Commission's ("SEC") proposed new and amended rules and forms, as set forth in Release Nos. 33-11042 and 34-94478, concerning climate-related disclosures for investors. The Letter proposes changes that support all market participants' common objectives of investor protection and fair and efficient capital markets. The SEC is targeting October 2022 for issuing final rules on climate-related disclosures.

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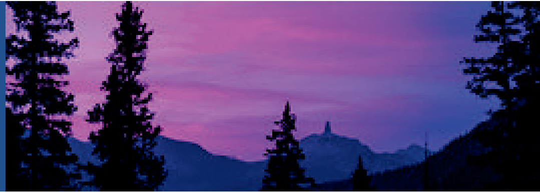

The Climate Report

REGULATORY ISSUES & UPDATES

Australian Corporate Conduct Regulator Releases Guidance on Greenwashing Risks

The Australian Securities and Investments Commission ("ASIC") has released guidance to superannuation and managed funds as to how to avoid the risk of greenwashing when promoting sustainability-related products. ASIC has affirmed that, for now, voluntary climate disclosures by relevant entities in Australia should be in line with the Financial Stability Board's Task Force on Climate-related Financial Disclosures. See Jones Day's recent *Commentary* on the ASIC guidance for additional information.

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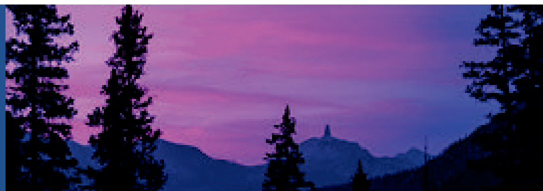

The Climate Report

LITIGATION ISSUES & UPDATES

U.S. Supreme Court Limits How EPA Can Regulate Greenhouse Gases

In *West Virginia v. EPA,* a case argued by Jones Day, the U.S. Supreme Court determined that Congress did not authorize the U.S. Environmental Protection Agency ("EPA") to compel generation shifting among existing electric power plants to combat climate change using the Clean Air Act. The decision announces the arrival of the major questions doctrine without a single reference to the *Chevron* deference that EPA relied upon as one of the legal building blocks for the now repealed Clean Power Plan.

Simply stated, the doctrine requires administrative agencies to have clear authority from Congress before they issue a major rule that significantly expands an agency's authority beyond what was previously understood. Examples include an agency charged with regulating prescription medicines attempting to regulate tobacco, an agency charged with regulating workplace safety attempting to regulate public health, and an agency charged with regulating public health attempting to regulate landlord-tenant relations. In the case of the Clean Power Plan, the Court found that an agency charged with regulating environmental matters was attempting to regulate how electricity is generated and distributed and determined that Congress had not clearly authorized the agency to step into that role.

The decision does not eliminate EPA's authority to regulate greenhouse gas emissions from existing sources. Quite the contrary. It confirms that the Clean Air Act confers this authority on EPA. The decision does, however, limit future EPA regulation under existing law to systems that are demonstrated, reasonably economical, and designed to reduce emissions from existing sources without attempting directly to regulate whether and how much a particular source operates. Of course, the decision also implicitly invites Congress to step forward and expressly authorize action by EPA. For a more in-depth discussion of the implications of *West Virginia v. EPA*, see U.S. Supreme Court Curbs Executive Power and Reach of EPA.

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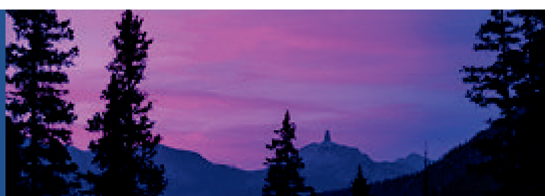

The Climate Report

LITIGATION ISSUES & UPDATES

Predicted Rise in Climate-Related Investment Arbitration Claims on the Horizon

Recent years have seen a steady increase in so-called "ESG" claims—i.e., those claims relating to environmental, social, or governance factors. A particular focus of this type of litigation has concerned climate change, with the majority of these claims being brought before national courts by nongovernmental organizations ("NGOs") or individuals arguing that governments or corporations have not taken sufficient action to combat climate change.

There is also an increase in awareness of this trend in arbitration, especially in investment arbitration—i.e., in arbitration brought by investors against states on the basis of bilateral or multilateral investment treaties (also sometimes referred to as "ISDS," as an abbreviation for investor-state dispute settlement). In contrast to the litigation claims brought before state courts where claimants allege too little is being done, investors frequently allege the opposite in ISDS arbitration: i.e., that states are frustrating companies' investments by introducing stricter climate-related regulation.

As discussed in our previous report, examples of such claims include the investment arbitration cases brought by two energy companies against the Netherlands due to the Dutch government's decision to phase out coal plants (*RWE v. Netherlands*, ICSID Case No. ARB/21/4; *Uniper v. Netherlands*, ICSID Case No. ARB/21/22) and a case brought against Italy's denial of a coastal drilling concession (*Rockhopper v. Italy,* ICSID Case No. ARB/17/14). Similarly, various stakeholders have brought or have noticed anticipated legacy claims under the North American Free Trade Agreement against the United States for their revocation of the Keystone XL pipeline project.

A recent study published by *Science* on May 5, 2022, estimates that government actions to limit fossil fuels could trigger claims worth up to $340 billion from investors in the oil and gas industry alone (*see* Kyla Tienhaara et al., "Investor-state disputes threaten the global green energy transition," *Science*, 5 May 2022, here).

In arriving at this figure, the study considers two scenarios:

- Under the first scenario, states would terminate all fossil-fuel projects that did not have a final investment decision by December 31, 2021.
- The second scenario would also ban projects that already have a final investment decision.

The high-end estimate of the study finds that the amount of potential fossil-fuel claims in investment arbitration would be higher than the total of global public climate finance spent in 2020. The authors suggest that states may want to terminate their bilateral investment treaties, negotiate the removal of arbitration clauses from multilateral trade agreements, or at least withdraw consent to investor-state arbitration for cases involving fossil fuels to "reduce existing ISDS threats."

While the current war in Ukraine may lead to a certain revival of investments in traditional energy infrastructure (e.g., gas and oil) in the short-term as further independence and diversification from Russian-supplied energy is sought, there remains a general consensus that legacy fuels such as coal, oil, and, to a lesser extent, gas should be replaced by renewable energy sources. These positions were outlined in the EU Commission's REPowerEU, a plan devised in 2022 to rapidly reduce dependence on Russian fossil fuels and speed up the green transition.

Many jurisdictions within the European Union can thus be expected to introduce national legislation in conformity with REPowerEU to accelerate the already intended gradual phase-out of fossil fuels in the coming years. As a result, many investors may find themselves in a situation where they may consider bringing a claim against states for their frustrated investment.

Whether ensuing investment arbitration claims will be successful, however, must be addressed separately. In this context, it is also important to bear in mind that many modern bilateral investment treaties contain carve-outs for environmental regulation, which would limit investors' chances of success. That being said, it seems likely that a higher number of investment arbitrations relating to fossil-fuel projects will have a climate angle going forward. Companies should recognize this option and continue to monitor the applicable ISDS framework in jurisdictions in which they have invested so as to be aware of any potential changes in the legal regime that may jeopardize viable claims.

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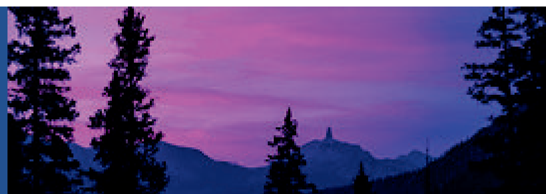

The Climate Report

TRANSACTIONAL ISSUES & UPDATES

Overview and Impact of Singapore's Green Plan 2030

The Singapore government unveiled the Singapore Green Plan 2030 ("Green Plan") in February 2021, a "whole-of-nation movement" to advance Singapore's national agenda on sustainable development. A progress update on the Green Plan was provided during the Committee of Supply Debate in March 2022 ("Green Plan Progress Update"), where the Singapore government made various updates and announcements on the key targets and initiatives in support of the Green Plan.

The Green Plan charts ambitious and concrete targets over the next decade, strengthening Singapore's commitments under the United Nation's 2030 Sustainable Development Agenda and the Paris Agreement.

Key Pillars of the Green Plan

The Green Plan seeks to rally bold and collective action to tackle climate change, and positions Singapore to achieve its long-term net-zero emissions aspiration as soon as viable.

Spearheaded by five ministries, the Green Plan features five key pillars: (i) City in Nature, (ii) Sustainable Living, (iii) Energy Reset, (iv) Green Economy, and (v) Resilient Future. In order to achieve these pillars, the Singapore government has introduced a wide array of initiatives and support measures in the research and development, energy, green finance, sustainable tourism, and land transport sectors.

Overview of Initiatives and Support Measures

Enterprise Sustainability Programme. As part of the Singapore government's efforts to empower, invest in, and partner companies and communities in the green transition, Enterprise Singapore ("ESG") launched the S$180 million Enterprise Sustainability Programme to support Singapore companies, especially small and medium enterprises, in their sustainability journey and to capture opportunities in the green economy in order to remain competitive in the local and global economy. Such support will focus on three key components—developing sustainability capabilities in enterprises, strengthening sector-specific capabilities, and fostering a vibrant and conducive sustainability ecosystem. ESG is also working with industry partners to develop training workshops and capability or product development projects.

Leading Centre for Green Finance. A key target under the Green Plan is for Singapore to be a leading centre for green finance in Asia and globally. To facilitate Singapore's transition to a low-carbon economy and spur Singapore's development as a green finance hub, the Singapore government announced at Budget 2022 that the public sector will issue S$35 billion of green bonds by 2030 to fund public sector green infrastructure projects.

The Monetary Authority of Singapore is also working on a comprehensive, long-term strategy to make sustainable finance a defining feature of Singapore's role as an international financial centre, and taking active steps to promote sustainable financing. For instance, the Green Finance Industry Taskforce has issued a detailed implementation guide for climate-related disclosure by financial institutions, a framework to help banks assess eligible green trade finance transactions, and a white paper outlining recommendations and laying out a roadmap to scale green finance in the real estate, infrastructure, fund management, and transition sectors. Most recently, in June 2022, the Singapore government published the Singapore Green Bond Framework, a governance framework for sovereign green bonds issuances. The proceeds from green bonds issued under such framework will be used to finance expenditures in support of the Green Plan.

Solar Deployment. As Singapore steps toward a green and low-carbon future, the Singapore government targets to increase solar deployment, together with an increase in the deployment of energy storage to address solar intermittency and enhance grid resilience. One of the aims is to increase solar energy development by five-fold to at least a two gigawatt-peak by 2030, so as to generate enough electricity to power around 350,000 households a year. To achieve its solar target, solar PV systems have been installed on the rooftops of Housing Development Board flats and estates, the Changi Business Park, the central business district, and the Tengeh Reservoir.

Impact of the Green Plan on Singapore and the Asia-Pacific Region

In the Green Plan Progress Update, the Singapore government raised its ambition to achieve net-zero greenhouse gas emissions by or around the mid-century. This decisive move is intended to establish the economy's competitive edge early in a low-carbon future, and create new growth opportunities in industry, services, and finance. The Green Plan brings about new opportunities in areas such as green finance, carbon services, and trading and sustainable tourism in Singapore.

Singapore's sustainability efforts and ambitions may create new green growth potential for the Asia-Pacific region and beyond. In particular, its strategic position as a regional hub in Southeast Asia can empower the region in its sustainability and decarbonisation efforts and accelerate Southeast Asia's green transition.

Conclusion

The Green Plan demonstrates Singapore's willingness to take firm actions to build a sustainable future and address climate change. The Singapore government has hailed the Green Plan as a "living plan" which will evolve with the Singapore society as new technologies and solutions present new options.

As sustainability efforts gain traction in the global economy, there is a greater urgency for Singapore to achieve its targets under the Green Plan if it wishes to lead the region in sustainable development and financing. Nevertheless, the initiatives and measures already taken by the Singapore government under the Green Plan are proactive and concrete steps toward a low-carbon future.

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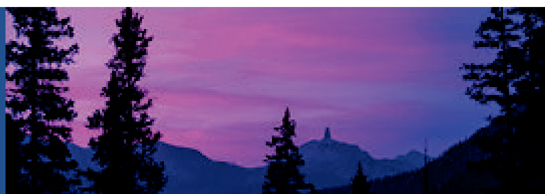

The Climate Report

TRANSACTIONAL ISSUES & UPDATES

Australian Carbon Credit Scheme Under Scrutiny

With a change of Australia's federal government in May 2022, there has been a radical shift in the country's position on climate change mitigation and the energy transition. The new Labor government has committed to a carbon emissions reduction target of 43% below 2005 levels by 2030. That target is markedly more ambitious than the previous government's target of a 26% to 28% reduction over the same period. For those doing business in Australia, this policy shift presents both heightened risks as well as commercial opportunities, as Australia accelerates efforts to reach net zero by 2050.

One mechanism by which businesses operating in Australia can seek to reduce their carbon footprint is by earning Australian carbon credit units ("ACCUs") (for example, by avoiding deforestation or regenerating forests) or by purchasing ACCUs on the secondary market to offset the entity's emissions.

The ACCU market was set up in 2011 by the establishment of the Emissions Reduction Fund ("ERF") pursuant to the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). The ERF is a voluntary scheme which aims to incentivise organizations and individuals to reduce their emissions by issuing ACCUs in exchange for carbon abatement activities. Under the scheme, one ACCU equates to one tonne of carbon dioxide equivalent that is stored or avoided by a project.

One anticipated consequence of the recent government policy shift is that there likely will be stronger demand and higher prices for ACCUs as entities seek to offset their emissions more aggressively. Importantly, however, this coincides with the Australian government's announcement in July 2022 of an independent inquiry into the integrity of ACCUs. The announcement of the inquiry follows whistleblower reports to the effect that the scheme is largely a sham and a fraud on Australian tax payers due to the lack of additionality for many of the credits—i.e., ACCUs are being issued for projects that would have been completed anyway (such as regrowing vegetation after it has been cleared, or commitments not to clear vegetation that was never going to be removed), or for projects that are not permanent.

Professor Ian Chubb, a former chief scientist of Australia, has been appointed to lead the inquiry. The terms of reference are to inquire into the integrity of ACCUs, including:

- The governance of the carbon crediting scheme;
- Whether the methods by which ACCUs are generated meet the Offsets Integrity Standards, including consideration of recent claims raised about Carbon Capture and Storage ("CCS"); and
- The broader impacts of activities incentivised under Australia's carbon crediting framework, including whether the current processes and requirements are appropriate to manage negative social, economic, and environmental impacts.

Professor Chubb has been given six months to conduct the inquiry and report his findings and any recommendations. This will include a period of public consultation and stakeholder meetings.

If the Chubb inquiry were to make findings consistent with the whistleblower's contentions, that outcome could have far-reaching consequences for entities which have relied, or which rely in the future, on ACCUs to offset their emissions. For example, where an entity has made disclosures or other public representations as to carbon emission offsets or net positions, a finding that the ACCUs relied on in making those representations are *low* integrity and *would not* have offset certain tonnes of carbon dioxide equivalent that could expose the entity to private actions (including class actions), as well as regulatory investigations and/or proceedings alleging misleading or deceptive conduct, greenwashing, misleading advertising, or similar claims.

In light of the Chubb inquiry, entities operating in Australia which typically acquire ACCUs as part of their emissions reduction strategy should consider:

- Investigating for themselves the integrity of ACCUs relied upon (to the extent possible in the circumstances);
- Diversifying the types of offsets that are relied upon so that ACCUs aren't the only offsets in the equation;
- Acquiring surplus ACCUs or other carbon credits in order to provide some redundancy in the emissions tally in case it appears (in due course) that the ACCUs relied upon are low integrity and ought to be disregarded; and
- Whether there are reasonable grounds for treating ACCUs which are intended to be earned or acquired as the equivalent of one tonne of carbon dioxide abated in forecasts or predictions as to an entity's net carbon emissions in a particular period or by a particular date—these being representations as to future matters.

We will continue to monitor and report on developments concerning the Chubb inquiry and related matters.

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The Climate Report

TRANSACTIONAL ISSUES & UPDATES

Mexico's REDD+ Projects: Update on GHG Emissions Avoidance

REDD+ National Strategy

In its effort to tackle climate change and the registered emissions in the country, Mexico has developed the National Strategy for Reducing Emissions from Deforestation and Forest Degradation ("ENAREDD" or the "Strategy"), which entered into force in 2017. Its goal is to promote sustainable rural development and preserve and implement national forest carbon stocks.

ENAREDD includes the following main components: (i) public policies and legal framework; (ii) financing schemes; (iii) institutional arrangements; (iv) monitoring, reporting, and verification and reference level; (v) social and environmental safeguards; (vi) communication and capacity development; and (vii) social participation and transparency.

The Strategy is part of Mexico's efforts to comply with its international commitments in terms of greenhouse gas emissions contained in the Kyoto Protocol and, now, the Paris Agreement. As noted in Article 7, Section LXI of the General Law for Sustainable Forestry Development ("LGDFS"), "[f]orest ecosystems function as carbon sinks providing environmental services of carbon dioxide absorption, sequestration, fixation and storage."

By establishing the conservation of forests and mangroves, and thus avoiding emissions, the Strategy aims not only to address climate change, but also to guarantee the quality of life of human communities. This includes safeguarding the provision of environmental services that allow food production and protection against natural disasters, among others. As also stated in Article 7, Section LXI of the LGDFS, "[b]enefits provided by ecosystems" include "provisioning, regulating, supporting or cultural services, and which are necessary for the survival of the natural and biological system as a whole, and which provide benefits to humans."

In accordance with ENAREDD policies, those parties that wish to compensate for their avoided emissions may register a project under the Strategy's voluntary market. In order to do so, a holistic tracking and follow-up program on the sequestered emissions must be developed by the country to assure that double counting of emissions is avoided. Such is the reason why the LGDFS mandates that "a national monitoring system, in order to evaluate and systematize the reduction of emissions derived from actions to prevent and combat deforestation and degradation of forest ecosystems" must be created. The way avoided emissions are counted and their benefits distributed among those claiming credits remain to this day one of the challenges in the implementation of the Strategy, leaving the projects with a level of uncertainty. This is due to the fact that, according to the Strategy, the nation (through the federal government) will be the beneficiary of payments resulting from the avoidance of emissions. This, evidently, is problematic for project developers and may discourage new ones.

Regarding blue carbon projects (those focused on the protection and restoration of coastal ecosystems as a way to reduce the impacts of climate change), under the ENAREDD, the protection of mangroves is a critical part of emissions avoidance, as Mexico has the fourth largest of this type of ecosystem worldwide. With respect to mangroves' protection, these are considered a wildlife species under Mexican Law. Therefore, they are subject to specific provisions regarding protection and utilization established in: (i) the General Law of Ecological Balance and Environmental Protection and its Regulations on Environmental Impact Evaluation; (ii) the General Wildlife Law and its Regulations; (iii) the Mexican Official Standard NOM-022-SEMARNAT-2003, "[t]hat establishes the specifications for the preservation, conservation, sustainable utilization and restoration of coastal wetlands in mangrove areas"; and (iv) the LGDFS.

On the above, among other applicable requirements, blue carbon projects must comply with the "Additionality" criterion, which requires that resources resulting from the carbon credits are needed to achieve the desired emissions avoidance; therefore, the mentioned mangrove protections pose certain challenges as they must be preserved by law.

Projects in Mexico

According to information published by Mexico's authorities, REDD+ projects in the country have included the States of Jalisco, Campeche, Quintana Roo, Yucatán, and Chiapas. Furthermore, the State of Mexico, Michoacán, and Oaxaca have recently begun the implementation of REDD+ projects in their territories. Likewise, the National Forestry Commission published a short list of the ongoing projects developed under the REDD+ scheme.

Within the scope of the abovementioned Mexican Legislation to reduce deforestation and forest degradation, certain international entities have developed mangrove conservation and restoration projects in several locations nationwide, which are in the process of being, but have not yet been, certified.

Regulatory Update

The LGDFS and the General Law for Climate Change ("LGCC") regulate carbon capture and avoided emissions projects under ENAREDD. Regarding the LGCC, one of its objectives is to "regulate the emissions of greenhouse gases and compounds so that Mexico contributes to achieve the stabilization of their concentrations in the atmosphere at a level that prevents dangerous anthropogenic interference in the climate system."

The LGDFS was recently amended by the Federal Congress to allow owners and legitimate possessors of forest lands to compensate or transfer emissions credits in national and international voluntary markets in accordance with general provisions established by the Ministry of the Environment and Natural Resources ("SEMARNAT"). However, the legal reach to be given by the latter is still unclear, and the amendments generate gray areas.

The implementing guidelines for these amendments are still to be published by SEMARNAT. One of the main concerns of project developers is that, considering ENAREDD positions on the matter, general guidelines may limit the capacity of landowners to receive avoided emissions benefits. Final guidelines from SEMARNAT and how they are ultimately implemented remain to be seen, but should be closely monitored, as they will impact emissions avoidance projects going forward.

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