

Carbon Credits

YOUR TRUSTED ESG GUIDE

Carbon Credits

An instrument to speed up emission reductions

Whether we like it or not, we all are responsible for the emission of harmful greenhouse gases. In doing so, we are – to a greater or lesser extent – contaminating the atmosphere, heating up the earth, causing climate change, and all its dire consequences.

In their battle against **climate change**, several supranational organizations have set up mandatory carbon trading systems. The European Union's Emissions Trading System (EU-ETS) is a prime example of such a set-up. It puts a cap on the total amount of greenhouse gases that can be emitted. Forcing organizations in the EU to cut down on their emissions, while at the same time allowing them to buy – or sell – emission rights.

Next to mandatory carbon trading systems, there is an ever-growing market for so-called voluntary carbon credits. In this set-up, greenhouse gas emitters can voluntarily compensate for their unabated emissions by purchasing credits from projects targeted at removing or reducing greenhouse gas emissions from the atmosphere. In this way, **voluntary carbon markets form a key supplementary resource to achieve and speed up global reductions** in greenhouse gases.

However, the voluntary carbon market is still largely unregulated and – in contrast to EU-ETS certificates – voluntary carbon credits do generally not qualify as financial instruments.

When it comes to the voluntary carbon market, **we believe high integrity carbon credits, used in a credible and supplementary manner**, can play an instrumental role in reducing one's emissions in line with the Paris Agreement. If done properly, voluntary carbon credits can offer both buyers and sellers verifiable, **accurate and permanent savings in greenhouse emissions**.

High integrity carbon credits

Viable, robust and transparent

1

High integrity carbon credits encourage additional investment in projects that **help reduce greenhouse gas emissions** to alleviate the adverse effects of climate change.

2

High integrity carbon credits comply with the **highest market standards for the development** of quality carbon credits, such as those recently laid down by the Integrity Council for the Voluntary Carbon Market (ICVCM).

3

High integrity carbon credits are **uniquely serialised, issued, tracked, and registered** by a third-party carbon crediting program, such as Gold Standard or Verra.

4

High integrity carbon credits are **used only by companies which have committed to (and are living up to) a science-based target** to reduce their own emissions in line with the Paris Agreement.

5

High integrity carbon credits are **explicitly not a stand-alone instrument** to offset ongoing greenhouse gas emissions or to facilitate business as usual. They are a **supplementary tool** which first come into play after having achieved the **necessary reductions** in one's own emissions.

Voluntary carbon markets

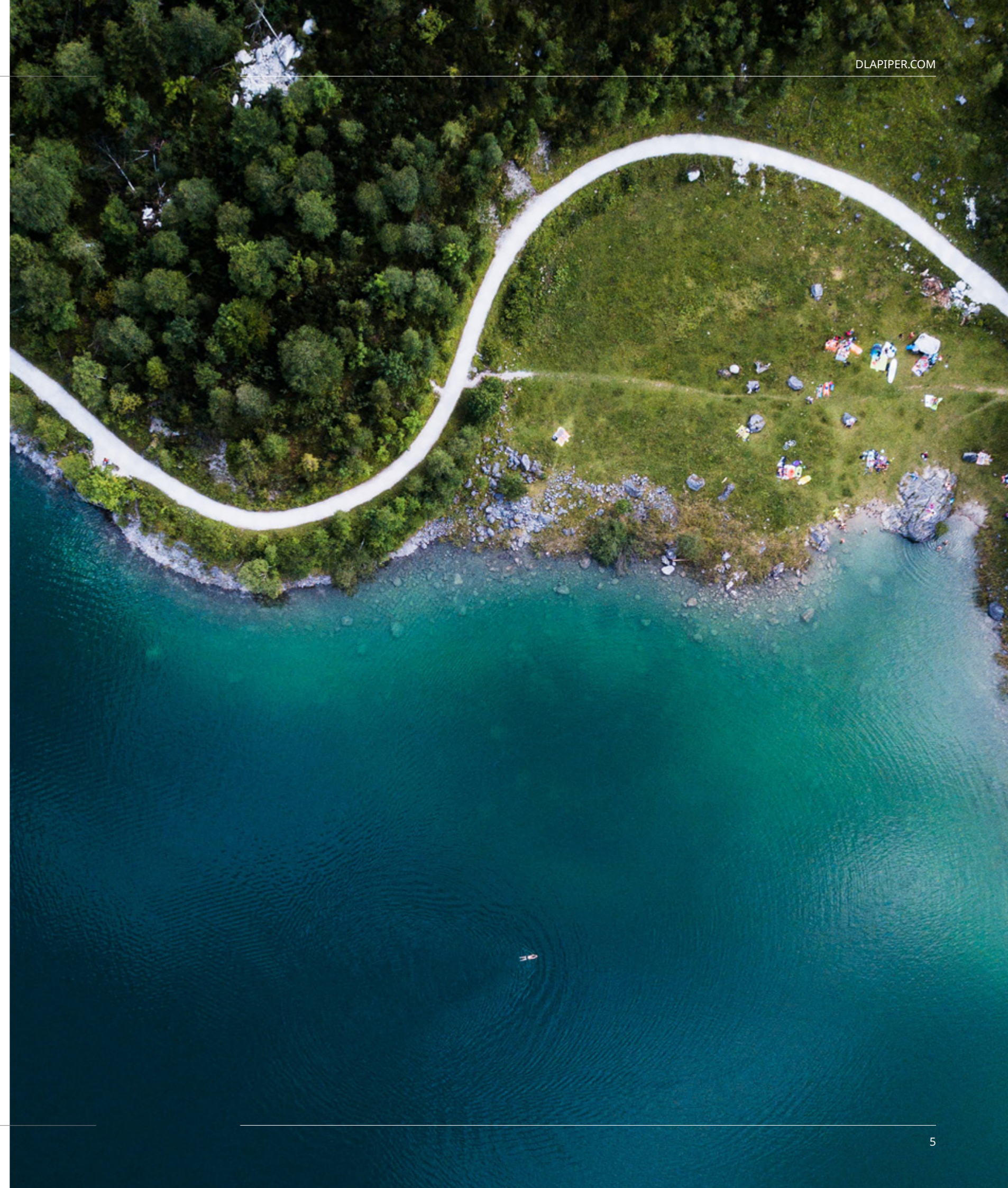
Let us help you seize the opportunities and avoid the pitfalls

At the moment, voluntary carbon credits are all the rage. In 2021 alone, the **global voluntary carbon market grew 400% to \$2 billion**, with a further projected **growth to \$17 billion annually by 2027**. At the same time, if we reach net zero emissions by 2050, certain types of carbon credits (reduction credits) will no longer be viable and therefore worthless.

Simultaneously, **techniques to remove greenhouse gases** from the atmosphere (e.g., carbon capture) can be marketed through the issuance of **carbon removal credits**. These are likely to remain relevant even after 2050 to help offset those hard-to-abate emissions that may remain.

We at **DLA Piper** are excited about the unique and (to a certain extent) temporary opportunity that **voluntary carbon markets offer**. Mainly because they could **help businesses to accelerate their transition to net zero** and because they **channel resources that would otherwise not be available** into projects and programs that genuinely reduce or remove greenhouse gas emissions.

However, these unregulated markets do not only hold opportunities. They also hold uncertainties and risks. For many, voluntary carbon markets are rather uncharted territories. That's where we come in. As your trusted guide, **we can help you navigate this rapidly changing landscape**. Allowing you to seize the opportunities and avoid the pitfalls.



How viable is my scheme?

Business advice

Every carbon credit scheme needs to be future proof. **We actively support the development of up-to-date market standards**, with the intention of supporting carbon credit programs which represent the best value – not just for you but also for the environment. Therefore, whether you want to set up a system around the purchase and use of credits or to develop your own carbon credit project, **we can help you to align with the best-in-class carbon principles, regulations, and standards.**

We can advise on how to determine the best scheme for your business and help you set up such a scheme, based on best practices. **Our assessment of possible risks, benefits and potential mitigation** – e.g., double counting and additionality – offer a framework which supports you in your decision making process.

Are we compliant?

Regulatory advice

Depending on the type of business you are in, selling or otherwise trading in voluntary carbon credits can also attract scrutiny from regulators. This will hold especially true if you are a (regulated) financial institution. **Financial market-and platform regulators** are increasingly taking an **interest in the voluntary carbon market and carbon credits** sold or traded by financial institutions. Whether you run the risk of falling in the cross hairs of financial market and platform regulators will depend to a considerable extent on how the carbon credit is created and sold or traded. It will also depend on whether you are a regulated entity or not.

We can **help you to assess** whether your **carbon credit system is at risk of qualifying as a financial instrument** and **how to best deal with the legal implications** thereof. In doing so, we will amongst other look at the potential regulatory qualification under the EU MiFID and banking laws as well as other laws as relevant. We can also **bring in experts from other jurisdictions** to advise on their **regulatory framework**. If a regulator has shown interest in your carbon market proposition, we can support you in your discussions with such regulator.

What is the best contractual framework?

Contracting & disputes

The fact that **voluntary carbon credit markets** are **largely unregulated** can **pose risks and challenges** to your carbon credit scheme. It is therefore vital to have thorough contracts in place. We can help you draft or assess the full scope of carbon credit documentation: from contracting for individual carbon projects, platforms and transactions to **setting up a complete project structure from a to z.**

In the event of a dispute related to carbon credits, **we can offer our in-depth knowledge to support you in managing and mitigating risks.** We have helped organisations around the world in different kinds of proceedings, ranging from B2B litigation regarding carbon credits transactions to greenwashing claims made by consumers or regulators.



Case #1

Advising on the set-up of a carbon credit system from cradle to grave

Our client, **a large Dutch bank**, set up a carbon market scheme aimed at opening the global market for carbon credits to so-called **small holder farmers**.

We were brought in at the outstart and were asked to **advise on the feasibility of the set-up in light of market standards**, and **the risk of the set-up** qualifying as a financial system. In this respect, we advised on the regulatory qualification of the carbon credits under the **EU MiFID** and **banking law framework**. This included multijurisdictional advice on the implications of offering these products in the UK, Brazil, and the US.

Given that the buyers of carbon credits have high demands in terms of the quality and robustness of the credits, it was paramount to **ensure that the credits were sufficiently robust** and that **they could be sold**. This meant that it was of key importance to ensure that the **chain of title in the credit remained intact through the value chain**.

Given that an overarching (cross-border) legal framework is still lacking, we advised the client on the **method of creation and registration of the carbon credits**. In addition, we prepared the entire suite of contracts for the lifecycle of a carbon removal unit, ranging from contracts with local small holder farmer and partners managing the projects on the ground to the sale of carbon credits to customers.

A key consideration was how to deal with smallholder farmers and making sure that they understand what they are signing up for. We helped by **simplifying the contract language** by turning complex legalese into plain language.

Case #2

Carbon market transformation projects

Our client, **a financial institution**, asked us to assist with the implementation of a new carbon market proposition geared primarily towards **carbon reduction**.

This concerned an ongoing **transformational process** whereby we have been asked to look at all aspects of the business proposition. This included **advice on the outsourcing of the development of an app** to give **insight** in the **footprint of customer spending, on greenwashing and consumer claims**, on agroforestry projects in countries such as Brazil and Ivory Coast, on supply chain decarbonization projects in the Netherlands. Also, we provided financial regulatory advice and analyses for all the above propositions.

The challenge with this ongoing project is the breadth of the advice sought, requiring specialist knowledge in the field of **contract law, advertising, real estate, (financial) regulatory** to name but a few. We have been able to showcase our full service offering to assist our client in this transformative project.

Case #3

Carbon auction

One of our clients wanted to develop a **marketplace for the sale of carbon credits** through an auction.

Together with our civil notary team, we advised the client on the set-up of the auction, the need for **transparent pricing, roles and responsibilities** (especially of the civil notary in terms of overseeing the entire process), the relevant auction terms, and the auction process. We also supported and managed the auction from an administrative point of view, resulting in a **favorable auction result** for the client (and the smallholder farmer community).

This project is a testament to our ability to offer our clients a **one-stop-shop for legal advice** when implementing voluntary carbon go-to-market strategies.

Do you want to know more?

Do not hesitate to **give us a call** to discuss. We are here to **help**.



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Khaled Dadi has extensive experience in the field of commercial contracts, such as contracts regarding the appointment of commercial agents, the organization of a distribution- or franchise network and other types of partnerships. Khaled is also advising on ESG matters in relation to commercial contracts. .

Besides his commercial contracts practice, Khaled Dadi is very active in the financial services sector and advises on a broad range of IT related agreements, such as IT/Outsourcing, IT-licensing, SaaS, software development, online platforms, blockchain implementation etc. Khaled is also an experienced IT-litigator.



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Rens van Blaricum is a commercial contracts lawyer with over 6 years' experience with a background in (environmental) regulatory. In addition to advising clients on general topics of international contract law and consumer law, Rens advises often on topics related to sustainability and GHG-emissions (Scope 2 and Scope 3). Rens has a particular focus on bridging the gap between the technical and legal world in sectors such as energy, industrials & technology.

Rens regularly advises clients on how to design and implement carbon credit projects, analyse and mitigate risks correctly, and how to ensure compliance with ever-developing market standards. In addition to work related to carbon credits, Rens also has experience in dealing with other emissions-related instruments such as HBEs and nitrogen rights

DLA Piper

Your trusted ESG guide

Environment, Social and Governance (ESG) can no longer be regarded as just a corporate box ticking or report writing exercise. It is now firmly established as the umbrella under which all facets of the transition towards a more sustainable future are gathered.

In the past few years, we've seen the ESG legal framework evolve rapidly. Making the transition towards a more sustainable future an undeniable and critical necessity for every business. Your organisation's social license depends on meeting stakeholder's ESG expectations, complying with the ESG legal framework and driving performance through a well-articulated strategy.

We believe that by making businesses better, we make the world a better place. On your journey towards a more sustainable future, DLA Piper is well positioned to be your trusted ESG guide. Wherever you are in your transition, we will guide you with forward-looking and pragmatic legal advice. With our global mind-set and vast practical experience, we can help you navigate environmental, social and governance challenges and seize ESG-related opportunities.

