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NATIONALISATION RISK

WILL HOST COUNTRIES HEDGE THEIR BETS BETWEEN ARTICLE 6 AND THE VOLUNTARY CARBON MARKETS?

As countries enact domestic legislation to implement their commitments in respect of their Nationally Determined Contributions (NDCs) under the Paris Agreement, it is likely that voluntary projects will be subject to greater regulation and scrutiny by host countries. In particular, voluntary mitigation or removal projects (Projects) are likely to face licensing or authorisation requirements as well as restrictions on international transfers of carbon credits or mitigation outcomes.

As highlighted in our comparison of the current legal position in Indonesia, India and Malaysia, different countries are presently at varying stages of the enactment of their domestic legislation to aid in the implementation and delivery of their NDCs. The extent of regulation and the consequential attraction to investors of that country as an investment location will also therefore vary between different countries as a result of the legislative approach that they adopt. Project proponents would be wise to carefully consider a host country's regulatory framework in assessing Project risk, investment structure and therefore, feasibility.

Introduction

It was inevitable that countries, with commitments in respect of their NDCs under the Paris Agreement, will need to take domestic action. This includes passing legislation so as to enhance their ability to meet their NDCs. Therefore, even before a decision on Article 6 was reached at COP26, we recognised[1] that each country would establish or put in place a national control or authorisation framework (a **National Framework**) to facilitate or enable it to (i) comply with its Paris Agreement reporting obligations under Articles 4, 6 and 13 of the Paris Agreement, (ii) determine how it will manage and organise its greenhouse gas (**GHG**) abatement opportunities within an NDC and across future NDCs. If it wishes to participate in Article 6, develop an authorisation framework for approvals of mitigation outcome activities (an **Art 6 Authorisation Framework**). We, at HFW, had termed this legislative upheaval, at the level of the host country, 'Nationalisation Risk'.

Not all countries will be interested in the two carbon market mechanisms of Article 6 agreed at COP26. For example, the EU has, for the present time, excluded reliance on the purchase or import of units generated under either the Article 6.2 cooperative approach (**Cooperative Approaches**) or the Article 6.4 Mechanism (the **Art 6.4 Mechanism**) for meeting its NDC obligations. Other countries, particularly those with common but differentiated responsibilities, may be willing to utilise their lower cost domestic abatement opportunities to raise finance from the international sale of such mitigation outcomes to subsidise or finance their higher cost GHG abatement sectors. Host countries with abatement opportunities, in particular a country that is looking to sell under Article 6 (a **Selling Country**), will have to go through a process of putting in place a National Framework and an Art 6 Authorisation Framework. Each such framework will differ to take into account country-specific factors e.g., that country's NDC and specific constitutional framework and restrictions.

Of course, host countries are not obliged to use the Article 6 markets to achieve these sales. They have a choice of using the voluntary carbon markets (**VCM**) to sell mitigation outcomes for voluntary market purposes. One of the key factors impacting their choice is that, in the context of Article 6 mitigation activity, such sales would require a corresponding adjustment to their NDC. The exception here being that under the Art 6.4 Mechanism, a host country can authorise and register Art 6.4 projects but the units are not authorised for Paris Agreement use (i.e. mitigation contribution Art 6.4 ERs, as defined below). In contrast, for voluntary markets, the Voluntary Carbon Markets Integrity Initiative (**VCMI**) has stated that offsetting claims made pursuant to its 'Provisional Claims Code of Practice' (which is not yet finalised), will not require *"COUs to be associated with host country corresponding adjustment..."* [2]. The complexity of corresponding adjustments, and their implications on a host country's choices, are discussed further below.

A host country's choice – Article 6, voluntary markets or both?

The choice is not a binary one between Article 6 markets (with corresponding adjustment) and voluntary markets (without corresponding adjustment). The voluntary markets are themselves undergoing multiple changes as they are subjected to increased market scrutiny, potential voluntary oversight by the Integrity Council for the Voluntary Carbon Markets (**ICVCM**) and the VCMI. Such changes are not a surprise given that the voluntary markets, created in the era of the Kyoto Protocol, cannot remain in static form in light of the Paris Agreement's bottom-up approach of allowing countries to set their own NDC targets. The Gold Standard recognised this when it said that:

> *"Under the binary world of the Kyoto Protocol, there was a clear line of demarcation defining beyond-compliance climate action projects. Under the Paris Agreement, every country has a target. ... Defining 'beyond compliance' activities is fraught. This makes it challenging to be sure that the impact of a carbon credit has not inadvertently displaced an equivalent impact for which the host country has stated targets."*[3]

This question of what is therefore 'beyond compliance' in respect of a host country's NDC, has been asked not just in the context of whether the mitigation outcome activity is 'additional' but also as a question of whether it invites a corresponding adjustment as a means of ensuring that the voluntary activity has not inadvertently displaced the host country's NDC obligation[4]. Since the Carbon Offsetting and Reduction Scheme for International Aviation (**CORSIA**) allows carbon offset units generated through voluntary carbon markets (**COUs**) to be used towards meeting the compliance obligations of aircraft operators alongside Article 6 units, for COUs of 2021 vintage

1 COP 26: Article 6, Nationalisation Risk And What It Means For Voluntary Markets, online: https://www.hfw.com/COP26-Article-6-Nationalisation-Risk-and-what-it-means-for-voluntary-markets-Oct-2021.

2 VCMI, Provisional Claims Code of Practice, consultation document published on 7 June 2022, at p.14.

3 Gold Standard, "CONSULTATION: Operationalising and Scaling Post-2020 Voluntary Carbon Market" (16 June 2020), online: https://www.goldstandard.org/sites/default/files/documents/2020_gs_vcm_policy_consultation.pdf.

4 See Gold Standard Claims Guidelines, version 2.0 published on 9 June 2022, at p.12.

onwards, CORSIA has required that qualifying COUs should be subject to a corresponding adjustment.

Although this has not yet been made part of the legislative framework,[5] Singapore appears to be headed in the direction of requiring corresponding adjustments for COUs that may be used by compliance entities to satisfy part of their obligations under Singapore's carbon tax regime. For instance, the Government of Singapore has signed memoranda of understanding with Verra, the Gold Standard and the Gulf Carbon Council (**GCC**) for the potential recognition of their COUs as compliance units under its carbon tax scheme.[6] According to the press releases issued by the standards, in order to qualify for use in the tax scheme, it appears that these COUs will have to be subject to corresponding adjustment by the host country. In addition, as part of their response to the public consultation on the Draft Carbon Pricing (Amendment) Bill, the Singapore Ministry of Sustainability and the Environment has expressly stated that *"The [Singapore] Government will ensure that eligible [international carbon credits] are derived from real emissions reductions or removal, aligned with global climate ambition, and in line with Article 6 of the Paris Agreement,* ***including the requirement for corresponding adjustment by host countries****"* [emphasis added].[7]

The notion that, in order for a COU issued by VCM standards such as Verra, the Gold Standard or the GCC, to qualify for CORSIA purposes or for purposes such as meeting the Singapore tax scheme qualifying requirements, it will have to include a commitment from a host country that the COU will nonetheless be subjected to a corresponding adjustment of its NDC, therefore begs the question, why would that host country support the issuance of that COU in the VCM rather than the Article 6 markets?

Many host countries are seeking ways to encourage domestic abatement to achieve their own NDCs. As highlighted in the table below, countries such as Indonesia, India and Malaysia are taking steps towards the establishment of domestic carbon trading schemes with a view to progressively bringing more sectors into the scope of their domestic schemes over time.

The breadth to that sectoral scope is likely to reflect the ambition levels of their successive NDCs. This is no different from the approach adopted by the European Union in respect of its emissions trading scheme (**EU ETS**). As part of its European Green Deal[8], the EU set itself a binding target of achieving climate neutrality by 2050.[9] The EU then committed itself to cutting GHG emissions by at least 55% by 2030. The Fit for 55 package is *"a set of proposals to revise and update EU legislation and put in place new initiatives with the aim of ensuring that EU policies are in line with the climate goals agreed by the Council and the European Parliament."*[10] As part of this process, this required the formulation of a policy which was promulgated into EU legislation amending the EU ETS whereby the scope of the EU ETS is being expanded to cover new sectors (e.g. shipping).

However, for a host country looking to use international carbon markets to fund its higher abatement mitigation activities, there are essentially three different approaches available:

- They may choose to create internationally transferred mitigation outcomes (**ITMOs**) or

5 Although the Carbon Pricing Act 2018 permits parties subject to the carbon tax to pay the tax with carbon credits, there is no express requirement in the legislation yet that the carbon credit involve a corresponding adjustment.

6 Straits Times, "COUs used to offset carbon tax bill in Singapore must meet certain criteria: NEA" (30 August 2022), online: https://www.straitstimes.com/singapore/environment/carbon-credits-used-to-offset-carbon-tax-bill-in-singapore-must-meet-certain-criteria-nea.

7 Ministry of Sustainability and the Environment, Response to Feedback on Draft Carbon Pricing (Amendment) Bill (22 September 2022) at para 12, online: https://www.reach.gov.sg/Participate/Public-Consultation/Ministry-of-Sustainability-and-the-Environment/public-consultation-on-the--draft-carbon-pricing-(amendment)-bill.

8 European Commission, "A European Green Deal", online: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en .

9 European Council, Council of the European Union, Fit for 55, online: https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/.

10 European Council, Council of the European Union, Fit for 55, online: https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/.

“At present, there is no transparent price for an Art 6.4ER, an ITMO or a COU that benefits from corresponding adjustment. Therefore, as things stand today, a host country cannot make an informed choice about whether they can get a better price for a correspondingly adjusted unit or a VCM COU that does not require a corresponding adjustment”

Article 6.4 emission reductions (**Art 6.4ERs**) via Cooperative Approaches or the Art 6.4 Mechanism respectively, for which they will have to carry out a corresponding adjustment of their NDC according to the Art 6 accounting guidelines.

- They may choose to create COUs under VCM standards such as Verra, ART or the Gold Standard but not have to carry out a corresponding adjustment.
- They may choose a hybrid of the former approaches, for example by creating COUs using VCM standards but unilaterally agreeing nonetheless to carry out a corresponding adjustment to their NDCs when those COUs are transferred internationally. This approach (the **Hybrid Approach**) may be required by CORSIA or perhaps countries looking to permit COUs to be used for compliance purposes within domestic schemes.

However, if under the Hybrid Approach a country unilaterally commits to carrying out a corresponding adjustment, does the COU automatically become a unit that is capable of being used by purchasing Paris Agreement countries towards their NDC? For this to occur, such COUs would have to be considered an ITMO or Art 6.4ER as these are the only two units recognised under the Article 6 accounting rules. Since Art 6.4ERs only arise via activities registered under the Art 6.4 Mechanism, the only alternative would therefore be an ITMO (in particular as part of an ’other purpose use’ case). However, ITMOs arise under Cooperative Approaches between countries (i.e. plural) that participate in such Cooperative Approaches. In this instance, a host country is making a unilateral declaration to a VCM standard (such as Verra or the Gold Standard). This may not be enough to satisfy the Art 6 accounting rules necessary for the treatment of a COU as an ITMO capable of being used for NDC purposes.

For a host country, the accounting and economic cost of carrying out a corresponding adjustment is the same whether the unit in question is an Art 6.4ER, an ITMO or a COU. Their choice is therefore going to depend on factors such as (i) the speed by which the Art 6.4 Mechanism becomes operational, (ii) the ease of use or convenience of the new Art 6.4 markets versus the VCM and, from their perspective most importantly, (iii) the market price of an ITMO or Art 6.4ER compared to a correspondingly adjusted COU or a non-correspondingly adjusted COU.

At present, there is no transparent price for an Art 6.4ER, an ITMO or a COU that benefits from corresponding adjustment. Therefore, as things stand today, a host country cannot make an informed choice about whether they can get a better price for a correspondingly adjusted unit or a VCM COU that does not require a corresponding adjustment. Prices for VCM COUs are, of course, becoming increasingly transparent albeit still illiquid due to the fragmented nature of the demand for such COUs. As such, in making any current decisions, a host country is mostly drawing on the experiences in the VCM rather than the Article 6 markets. Project or program activities currently being developed are similarly therefore focused on the VCM standards and methodologies. They remain the only ‘game in town’ until, in particular, the Art 6.4 Mechanism becomes operational. The progress made on this at COP27 was disappointing.

However, for many Selling Countries, the memory of the Clean Development Mechanism (the **CDM**) under the Kyoto Protocol remains a cautionary tale of promises made but not fully delivered. The demand-side of the CDM markets collapsed when the EU withdrew its acceptance of certified emission reductions, issued under the CDM, as a compliance instrument within the EU ETS. This meant that host countries lost their ability to finance their climate change mitigation and adaptation needs through market mechanisms. It is therefore no surprise that, in the Paris Agreement context, host countries may wish to hedge their bets, between VCM and Article 6 markets going forward.

This hedge is likely to be reflected in the relevant legislation they pass and the manner in which their National Frameworks or Art 6 Authorisation Frameworks are to be introduced.

How does a host country hedge its bets?

As Selling Countries get to grips with the Article 6 decisions reached at COP26 and COP27, the question foremost on their minds is how can they achieve their NDC objectives? The difference in capacity and capability within the various Selling Countries will mean that they will be cautious on agreeing to sell units that obligate them to carry out a corresponding adjustment because, doing so may make it harder for them to meet their NDCs. Therefore, COUs in the VCM without the requirement for a corresponding adjustment are a

more comfortable fit for such Selling Countries.

An example of this may be seen in the Energy Conservation Bill (the **Indian Bill**) being debated by the legislature in India. The Indian Bill aims to establish a domestic carbon trading market. However, it also contemplates support for domestic voluntary carbon offsetting schemes, sitting outside of the scope of the carbon trading market. Although the Indian Bill does not expressly prohibit the export of COUs issued for the purposes of its carbon trading markets, statements made by relevant ministers during the passage of the bill in parliament suggest that some restrictions may be made to the export of domestic carbon credits. It does not therefore mean that restrictions will be imposed on voluntary COUs but, given the purpose of the carbon trading market is to enable India to meet its NDC, it is logical that voluntary carbon mitigation activities, that sit outside of India's NDC, will not be subject to potential restrictions. However, clarity on this issue may not be available until subsequent legislation sets out the detail for how the carbon trading market and the voluntary markets will work.

No doubt, as India's NDC commitments expand, so will the scope of its national carbon trading market, therefore shrinking the areas where voluntary mitigation activity may occur without any NDC commitments being infringed. However, to achieve that, the host country must first have control over the abatement process within its jurisdiction. Therefore, the Indian Bill aims to govern the activities in India relating to carbon trading, carbon credits, GHG reduction activities etc. by ensuring the oversight of the Ministry of Environment and Forest and Climate Change (**MOEF&CC**). Essentially, it sets up India's National Framework.

A similar National Framework has already been established in Indonesia. This exists through the passing of Presidential Decree No. 98 of 2021 which obliges all mitigation activity in Indonesia to be subject to the oversight of the Ministry of Environment and Forestry (**MOEF**). This oversight includes the right to approve each such activity. The MOEF has recently published Regulation No. 21 of 2022, which sets out detailed rules for the authorisation and licensing of mitigation activity. In this regard, please refer to the table below.

In Malaysia, although a Climate Change Bill is envisaged at the level of the Federal Government, the delay in progressing this has allowed the state of Sarawak to progress its own state-level legislation. Under the Sarawak legislation, a licensing framework has been created over any persons seeking to carry out forest carbon activity in any permanent forest, state land or alienated land.

Comparative overview of Indonesia, India and Malaysia

In conjunction with our colleagues from SSEK (Indonesia), TT&A (India) and Adnan Sundra & Low (Malaysia), we have sought to provide readers with a broad overview of the National Frameworks for Indonesia, India and Malaysia respectively, in the Table below. These three countries have been chosen in light of announcements by their national or subnational governments on the introduction of a National Framework or a sub-national framework in those jurisdictions. Such an overview is intended to highlight how different countries are likely to take different approaches to how they deal with NDC obligations and market opportunities.

Although the National Frameworks in India and Malaysia are still undergoing development and refinement, and the Indonesian framework has only just been rolled out, we highlight below some observations:

- One commonality between these National Frameworks is that they contemplate the setting-up of domestic carbon trading schemes in order to meet their respective country's NDC. In order to keep track of mitigation outcomes on emissions reductions or removals generated by projects, these National Frameworks would generally require these activities and projects to obtain authorisations in order to trade in COUs.
- Another common thread running through these three countries' approaches is that their governments appear concerned about the potential impact of the international transfer of COUs on their NDC. Their concern seems to be that the international transfer of COUs generated within their countries would require a corresponding adjustment to their NDC, which could cause them to fail to meet their NDC.
- At first blush, this concern might appear surprising and at odds with the current accounting treatment of COUs under the Paris Agreement. Most existing voluntary standards do not presently require a corresponding adjustment for COUs, unlike units generated pursuant to Art 6. However, this concern may be justified by the Hybrid Approach referred to above whereby certain COUs may attract a corresponding adjustment (e.g., for CORSIA purposes and post-2021 vintages). It would therefore be logical for host countries to set up National Frameworks to control the export of COUs and ensure that the export of surplus COUs with corresponding adjustments does not have a detrimental effect on their NDC.
- These governments may therefore be 'hedging their bets' by establishing a legal framework whereby the international transfer of certain COUs (e.g. CORSIA eligible COUs) will only be permitted if the corresponding adjustments would not cause their countries to miss their NDC targets. By establishing these tight controls, these governments can try to minimise their NDC performance risk under the Paris Agreement and the Hybrid Approach.
- The primary difference between the three countries surveyed lies in how advanced they are in establishing their National Frameworks. The process is most advanced in Indonesia, where both a National Framework and an Authorisation Framework has been established. In Malaysia and India, draft legislation related to National Frameworks has not yet been enacted into law. Based on current trajectories, it seems likely that the Malaysian and Indian

governments will implement a similar authorisation framework but it remains to be seen what methods they will adopt to implement such a restriction.

- Regardless of the precise mechanism by which governments implement a process for international transfers of COUs, the different approaches adopted by different countries may complicate project planning as market participants may have to develop different transaction structures to reflect the idiosyncrasies of each country. Therefore, different governments may adjust their processes over time to become more competitive vis-à-vis buyers who will simply focus on countries with fewer barriers to trade. The ease of doing business in a host country will also, therefore, impact the price a buyer will be willing to pay.

Conclusion

Nationalisation Risk has culminated in the roll-out of National Frameworks as countries seek to bring the voluntary carbon markets into their national fold. The extent of oversight (as indicated by the survey for Malaysia, Indonesia and India) will differ. Beyond National Frameworks, project authorisation frameworks (e.g., as established in Indonesia) are necessary where the host country wishes to participate in the Article 6 market mechanisms. Participants in the voluntary carbon markets will have to embrace and accommodate each country's national ambitions as part of GHG mitigation and removal activities being developed as projects or programs in such countries.

Item	Indonesia	India	Malaysia
Status of the regulatory framework for carbon in the relevant jurisdiction	Presidential Regulation No. 98 of 2021 (PR 98) imposes a requirement that carbon project proponents obtain prior approval from the Minister of Environment and Forestry (MOEF) before trading COUs. The legislation establishes a framework for a domestic carbon trading mechanism and to regulate international transfers of COUs. A carbon tax was also enacted through Law No. 7 / 2021, concurrently with PR 98, though its implementation was suspended. Regulation No. 21 of 2022 (**Reg 21**) sets out detailed rules for the National Framework and Authorisation Framework (including for the authorisation of Projects). It also makes provision for carbon taxes.	Energy Conservation Bill 2022 (**2022 Bill**) has been passed by the lower house of the Indian Parliament and is currently pending in the upper house and expected to be discussed in December 2022.	The Ministry of Environment and Water (**MEW**) announced in September 2022 that the ministry was in the midst of finalising the draft Climate Change Bill, which is expected to complete by the end of the year and expected to be tabled for first reading in the lower house of the Malaysian Parliament early 2023. Sarawak has introduced legislation relating to carbon activities, including carbon capture and storage activities and forest carbon activities to be carried out in permanent forests, over state land and alienated land with the intent to create carbon stocks and carbon credit units verified under carbon standard rules recognised globally. These legislations have been assented by the Governor of Sarawak and published in the gazette and shall come into force on such date as the Minister of Natural Resources and Urban Development may appoint by notification. In Sabah, a committee on climate change has been tasked with developing a state-level legislative framework on climate change.

Item	Indonesia	India	Malaysia
Is there a carbon tax?	Yes.	Not at present.	There is no carbon tax regime in Malaysia as at November 2022. That said, however, the Budget 2023 that was announced on 7 October 2022 provided that the Malaysian government intends to introduce a carbon tax regime and will study the feasibility of a carbon pricing mechanism. To support the implementation of such pricing mechanism, the Malaysian government will provide RM 10 million in matching grants to support the preparation of carbon assessments by small and medium-sized enterprises (SMEs) and for eligible related products.
Is there a cap-and-trade scheme for GHG emissions?	Yes. Reg 21 establishes a framework for a domestic emissions reduction trading mechanism and to regulate international transfers of ITMOs and/or COUs.	Not at present. There is existing energy efficiency legislation (the Energy Conservation Act 2001), which empowers the Bureau of Energy Efficiency (**BEE**) to set energy savings targets and issue energy saving certificates to covered entities in specific sectors. These certificates can be traded between covered entities. The 2022 Bill contemplates the setting up of a voluntary market for trading of carbon allowances to businesses and other institutions that voluntarily register under its "carbon credit trading scheme". Although voluntary at the start, the objective is that the scheme should transition to a mandatory cap-and-trade system. The details of such a market are not fully fleshed out in the 2022 Bill and are likely to be announced separately in subsidiary regulations.	There is no cap-and-trade scheme for GHG emissions in Malaysia as at November 2022. In the National Guidance on International Voluntary Market Mechanisms issued by MEW (**Guidance**), the ministry mentioned that it is working with other relevant ministries to develop the policy and the implementation framework of the domestic emissions trading mechanism. Based on this, it is expected that the Climate Change Bill will introduce a domestic cap-and-trade scheme while developing voluntary carbon markets. MEW, the Ministry of Finance, and Bursa Malaysia Berhad are collaborating on a voluntary carbon exchange based market that is projected to be launched by December 2022.

Item	Indonesia	India	Malaysia
Are Projects subject to prior government approval?	Yes. Authorisation must be obtained from MOEF. Foreign entities may be able to establish an Indonesian SPV to apply for project authorisation but may not be able to 100% own the SPV. It is unclear to what extent the SPV may assign or delegate its rights and duties to the foreign parent entity.	There are none in respect of Projects themselves in the Energy Conservation Act 2001. There are also no proposed restrictions on Projects themselves under the 2022 Bill.	In the Guidance, MEW imposes registration and reporting requirements for carbon projects. That said however the Guidance is a non-legally binding document and is intended to be a point of reference and to guide any entity planning to engage in voluntary carbon market mechanisms or international carbon market related activities. Following the spirit of the Guidance, it is expected that the Climate Change Bill that MEW is putting forward will impose regulatory approval requirements in relation to Projects. However, in relation to Projects in Sarawak, approval has to be obtained at the state level from the Ministry of Natural Resources and Urban Development and/or the State Planning Authority as imposed under the Sarawak state legislation upon coming into force.
Will COUs or carbon credits be issued by national authorities or by organisations administering voluntary standards such as Verra and Gold Standard?	MOEF will issue domestic carbon offset units. Whether COUs may be issued by voluntary standards or by the MOEF will depend on the terms of the mutual recognition agreement put in place between the MOEF and the relevant voluntary standard. Once issued COUs can be used in the domestic markets or transferred internationally.	The 2022 Bill contemplates that the BEE would administer the issuance and trading of carbon credits. Parties intending to trade COUs would probably have to be registered with the BEE.	Bursa Malaysia Berhad has inked a memorandum of understanding with Verra in May 2022 which focuses on developing local capacity and further announced in August 2022 that the Verified Carbon Standard administered by Verra will be adopted in the voluntary carbon exchange that is expected to be launched by December 2022.

Item	Indonesia	India	Malaysia
Do Projects face COU export restrictions?	Yes. MOEF will apportion Indonesia's NDC across several sectors, namely forestry, energy, waste, agriculture, and industrial processes and use. These sectors are further subdivided into sub-sectors. MOEF may only permit the export of COUs from projects in a sub-sector that are subject to conditions. For example, that transfers may only be permitted when the Indonesian government does not require the COUs to meet that sub-sector's share of its NDC under the Paris Agreement. Where such condition applies, MOEF may not permit the transfer of authorised COUs in or due to make up for sub-sectoral shortfalls in meeting Indonesia's NDC. MOEF may possibly rely on Indonesia's National Inventory Reports (which are required to be published as part of Indonesia's reporting obligations under the Paris Agreement) to determine whether Indonesia is on track to meet its NDC. MOEF will further insist that a certain buffer quantity of COUs be withheld from the Project until it has determined that the relevant sectoral NDC targets have been met for two (2) consecutive years. The exact buffer quantity will be determined by the MOEF on a case-by-case basis but will be (i) between 0 and 5% for domestic COUs, (ii) between 10 and 20% for foreign COUs, and (iii) at least 20% for COUs outside the scope of Indonesia's NDC.	There is some uncertainty about restrictions on international transfers of COUs. The text of the 2022 Bill does not contain any such express restriction and it remains to be seen if this restriction will be introduced when the subsidiary regulations are announced later.	MEW has stated in the Guidance that any involvement in international carbon trading shall be reported to MEW, as such trading has the potential to affect Malaysia's NDC. As discussed above, the Guidance is a non-legally binding document and is intended to be a point of reference and to guide any entity planning to engage in voluntary carbon market mechanisms or international carbon market related activities. Following the spirit of the Guidance, it is expected that the Climate Change Bill will have provisions which imposes export restrictions on Projects.

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