CHANNING LAW ADVISES ON AFRICAN EMISSIONS REDUCTION PURCHASE AGREEMENTS

A. Introduction

Africa is witnessing a rise in grid connected renewable energy projects. Such projects have a material impact on displacing global emissions by reducing conventional fossil sources of generation on national grids.

While Africa accounts for the smallest share of greenhouse gas emissions globally, its fast growing economies (see: *The Impact of Climate Change on Africa's Economies, Charles A. Ray October 29, 2021*) means its energy use will drastically increase in the coming decades.

B. Power Purchase Agreements

Increasingly, renewable energy African Power Purchase Agreements ("**PPAs**") contain provisions requiring (or facilitating) the renewable power generation company to take all reasonable steps to maximise the number or amount of, or benefit yielded from environmental attributes.

Environmental attributes are usually broadly defined to include carbon credits or attributes created pursuant to the Kyoto Protocol. The PPAs will usually legislate who will own such environmental attributes; for example, either the Buyer or Seller under the PPAs, or a sharing mechanism between the Buyer and the Seller.

C. Additionality

Additionality is a defining concept of carbon offset projects. To qualify as a conforming carbon offset, the reductions achieved by a project needs to be *"additional"* to what would have happened if the project had not been carried out.

Additionality in the context of a renewable energy project could be the construction of a new renewable energy generating plant that would not have otherwise been constructed and making available renewable electricity. The direct result of the offtaker purchasing such renewable energy is an increase in renewable energy generation and verifiable emission reductions.

For a renewable energy project's "*additionality*" to be established, the revenue the project makes which requires tariff and yield assumptions must be assessed.

The timeframe for registering a carbon offset project is key. In a renewable generation project, the registration of a project post the commercial operations date may prove difficult (albeit not impossible) to pass the "*additionality*" requirement, given that such project may be considered an already existing project.

D. Registration Process

Each carbon offset project must meet certain eligibility criteria and most critically, meet the additionality requirements (see above). There are several steps for a project to become fully registered, depending on the programme the project is registered under, for example under the Gold Standard and the Clean Development Mechanism the process is as follows.

- **Preliminary Review** – this step is to check that the project is eligible for carbon credits.
- **Project Design Review** – this step is a detailed review of the project and where additionality must be evidenced.
- **Performance Review** – the performance review is carried out once the project is in operation, to confirm it is operating within the parameters set out in the Project Design Review.
- **Credit Issuance** – the carbon credits can then be issued and sold.

Registration can be a costly process and costs are incurred at each stage of the following process:

- **Preliminary Review;**
- **Project Design Review;**
- **Performance Review;**
- **First Issuance;**
- **Subsequent Issuances.**

E. Carbon Monetisation

A project company may seek to generate additional revenue from carbon credit monetisation, however the global carbon market remains chaotic and volatile. The price can range (see: *Carbon Pricing Dashboard published by the World Bank*) from less than $10 per ton of CO2 equivalent to more than $100 per tCO2e. As such (for a renewable energy project) revenues from carbon credits are unlikely to feature in either a P50 or a P90 financial model scenario and at the time of writing, would be a "*nice to have*" in terms of project economics.

F. Project Finance

Where renewable energy projects have been project financed, the Emissions Reduction Purchase Agreements may be classified a material contract under the financing agreements and require lender consent prior to entry (subject to the value of this contract and the materiality thresholds under the financing agreements).

Further, in a project finance agreement consideration must be given to the project account - such revenue would be paid into a payment waterfall pursuant to the Accounts Agreement, as well as lender security.

G. Closing Remarks

The carbon trading market has moved a great deal since its advent and historic opposition to "*trading in pollution*" (Daniel Yergin, the Quest, 2011). Indeed, the emergence by the African energy sector into the global carbon trading markets is a welcome sign of the globalisation of carbon offsetting.